

CA' FOSCARI UNIVERSITY

European Master's Programme in Human Rights and Democratisation

A.Y. 2023/2024

From Violence to Rights

Comparative analysis of fundamental rights guarantees in Salvador and Colombia criminal systems.

Author: Juan Jose Valbuena Sanabria
Supervisor: Adalberto Perulli
Word Count Declaration: 231639

Table of content	
Abstract	3
Keywords	3
<u>1</u> Introduction	3
<u>2</u> Methodological considerations	6
<u>3</u> Background	10
<u>3.1</u> Colombian context	12
<u>3.2</u> El Salvador context	19
<u>4</u> Comparative analysis	24
<u>4.1</u> Other legal and constitutional systems	26
<u>4.2</u> The Colombian Constitution hermeneutic analysis	¡Error! Marcador no definido.
<u>4.3</u> Salvadoran Constitution hermeneutic analysis	31
<u>4.4</u> “LEY 599 DE 2000” Colombian Criminal Code	39
<u>4.5</u> DECREE number 1030 of 1997	40
<u>4.6</u> Total Peace Decree 2272 of 2022	42
<u>4.7</u> Decree N° 333 Regime of Exception	46
<u>5</u> Conclusions	48
<u>6</u> Bibliography	51

Abstract

What are the key similarities and differences regarding fundamental rights guarantees in the criminal justice systems of El Salvador and Colombia, and how have they evolved? In recent years, both El Salvador and Colombia have undertaken significant reforms to their criminal justice systems. Despite these efforts, concerns remain regarding the implementation and effectiveness of these reforms. This study explores the distinct approaches taken by each country, reflecting changes in traditional criminal justice practices under the leadership of President Nayib Bukele in El Salvador and President Gustavo Petro in Colombia. This research compares divergent strategies, emphasizing the importance of monitoring and evaluating the implementation and effectiveness of these reforms to understand their impact on human rights protection and overall criminal justice effectiveness.

Keywords

Human Rights, criminal system, Mano Dura, Latin America, comparative constitutional law.

Introduction

Over the past five decades, Latin America has faced multifaceted internal issues that extend well beyond the realms of politics culture, or economics. These challenges are deeply rooted within the region's social structures and values. Digging into this complex landscape provides invaluable insights into the evolution of the region's legal and criminal justice systems. Furthermore, Latin American nations have faced enduring struggles in confronting the intricate web of structural violence and narco-trafficking. Consequently, it becomes imperative to study and analyze the approaches adopted over the years to tackle these problems. In the early 21st century, the nations in this region could be divided into three categories based on the level of violence they faced. The first group, characterized by high homicide rates surpassing 40 per 100,000 people, comprised El Salvador, Guatemala, Colombia, Perú, and Venezuela belonged to an intermediate group, where homicide rates ranged from 10 to 39 per 100,000 inhabitants. Argentina, Chile, Uruguay, and Costa Rica constituted the low-homicide group, with rates below 10 per 100,000 inhabitants. (*Briceño,2002*)

While homicide rates have been decreasing in most of the world, Latin American and Caribbean countries are the exception, possibly only accompanied by parts of sub-Saharan Africa. Indeed, after experiencing a steep rise in crime rates in the 1990s, Latin America is currently one of the most violent regions in the world. While data is not available for some African countries, the Latin American/Central American/Caribbean region (LAC) has the highest homicide rates per 100,000 of population per region per year. According to the UNODC 2011 World Homicide Report, eight of the ten countries with the highest reported homicide rates in the world are located in this region. (Prado, 2012)

Understanding this phenomenon is essential to give an effective response to it, especially since Colombia and El Salvador have some of the highest homicide rates in Latin America. This is,

of course, is influenced by numerous factors such as violence, low income, and small levels of political and judicial stability, which makes this a complex task.

This research examines the effects and consequences of the implementation of criminal and legal policies in two countries that were devastated by violence Colombia and El Salvador. The intricate context of the Latin American countries poses significant challenges across various domains, including economics, social welfare, public health, and governance. Notably, this issue is particularly serious in countries grappling with political instability and war-to-peace transitions. Colombia and El Salvador exemplify this dual challenge, sharing similar struggles with political unrest and transitioning from conflict to peace while facing persistently high levels of crime and violence. (Moser, & Bronkhorst,1999). Understanding these shared complexities is vital to formulating effective strategies to promote stability and prosperity in such contexts.

While the reduction of criminal activity is certainly a focal point as an indicator to compare both systems, the research will go beyond mere crime rates. It will correspondingly examine related factors such as potential human rights violations and the broader societal impact, including the chilling effect, that may result from these policies This includes the study of criminological theories applied to both states and how the legal system is influenced by various factors that shape the framework of each country.

Moreover, this study aims to provide a clear scope of the impact of these policies regarding the protection of human rights in this context, acknowledging their potential benefits while critically assessing their drawbacks and unintended consequences, analyzing and examining available data, academy, and contrast with independent sources like non-profit organizations.

While the NGOs are often recognized for their role as service providers offering social services in the context of these policies, research from Latin America offers a different perspective so this is the value of taking all these other scopes. (Srinivas,2010), this will bring a more holistic approach to this research in order to perceive multiple factors that explain it since they have emerged as important actors both nationally and globally.

This study seeks to contribute to informed policymaking and foster dialogue aimed at optimizing societal outcomes. By comprehending the relationship between two similar cases like Colombia and El Salvador in their criminal justice systems in regard to the protection of human rights. policymakers can craft more targeted strategies aimed at mitigating violence and crime. Additionally, examining successful initiatives offers valuable lessons for countries tackling similar issues.

Taking into account this preliminary explanation on how this research is going to be addressed, I focus on two nations significantly impacted by the influence of criminal gangs, drug dealing, and violence, addressing the repercussions for civil society and the development of their legal frameworks. The significance and rationale for selecting Colombia and El Salvador serve as case studies due to their unique experiences, particularly within the criminal justice system context. Despite sharing a common problem, their current presidents address it differently, resulting in varying outcomes.

Both countries have undertaken substantial reforms in recent years intending to strengthen human rights protections within their respective criminal justice systems. However, lingering concerns persist regarding the implementation and efficacy of these reforms. Notably, the approaches have diverged, with El Salvador shifting under President Nayib Bukele with an authoritarian and Mano Dura approach by contrast Colombia is experiencing changes under Gustavo Petro to a more sociological and restorative approach. These differing trajectories underscore the complexity of navigating and reforming criminal justice systems in response to two different approaches that tackle criminality.

In El Salvador, the government has implemented several reforms focused on dealing with violence and gangs, including structuring a new criminal code and the creation of a new police force establishing a new prosecutorial system. Based on a punitive scope, these changes had been implemented over the course of the last few decades and are more visible in Nayib Bukele's presidential mandate, all this in order to eliminate crime and develop a more "effective" system that can deal finally with the root of their problem.

Punitive populism, a political strategy leveraging criminal law for electoral gains, operates on the premise that harsher punishments lead to reduced crime rates. Under this approach, political leaders introduce and endorse measures aimed at increasing penalties, offering what appears to be a quick and straightforward response to societal anxieties regarding high-profile crimes or the perceived threat posed by repeat offenders. The term gained prominence in the 1990s, coinciding with a significant surge in prison populations across many Western nations and the ascendancy of a "zero tolerance" narrative toward crime, which marked a departure from the consensus of earlier decades., (Álvarez, G. y Rothstein, 2017)

In Colombia, the criminal system had evolved, including the creation of a new victims' rights system, and the establishment of a new transitional justice system. This approach is completely opposite since it focuses on resocialization and prevention as principles of the criminal system. It's worth noting that this scope has been recently implemented, and thus, its full effects have yet to be realized. It is also important to monitor the implementation and effectiveness of the reforms that have already been implemented and compare the different methods.

To understand the contemporary relevance of comparing these two countries in the human rights field, I will first provide a concise historical context for each. This background will highlight the factors that shaped their current legal and political approaches to fundamental rights. Following this historical sight, I will explore the specific guarantees of fundamental rights in both countries. This analysis will begin with a top-down approach. This will provide a basis for understanding their common legal framework and potential policy convergences on human rights.

Then I will compare this domestic law by analyzing the national constitutions and criminal procedure codes of each country. This will reveal the specific legal mechanisms through which fundamental rights are protected during criminal investigations and prosecutions. This is particularly significant as it will be the key to understanding each country's local phenomena. Is an iron fist approach the most effective way to combat crime in Latin America? Or first, is it better to address criminality as a deeply rooted, structural problem requiring a comprehensive national policy? This will be analyzed by a legal comparative scale comparing with data and statistics in order to give a more holistic approach to this investigation.

This research also focuses on a comparative analysis of several key fundamental rights guarantees in the criminal justice systems of Colombia and El Salvador. These rights include the right to a fair trial, ensuring an impartial tribunal, adequate preparation of the defense, and the ability to challenge evidence. I will examine the presumption of innocence, where the burden of proof rests solely on the prosecution. Offenders are prosecuted and punished as adults, resulting in a more punitive system than other democracies, with an incarceration rate that exceeds any other in the world. Throughout this period, crime has remained a deeply politicized issue, with the policies in question enjoying broad public support. (Beale, 2006)

To comprehend in a deeper way how this works, I observe the significance that criminal punitivism has gained in countries where the government lacks credibility, as the population perceives no tangible results in attempts to control gangs and violence. This trend has been increasing in popularity in recent years, particularly evident in Latin America, notably with the Salvadoran and Ecuadorian governments¹.

A more recent strand of relevant theorizing highlighting the symbolic function of criminal punitivism has concentrated on the social and cultural contexts of late modern societies. In a comprehensive analysis of the social responses to crime, arguing that punitivism was not a mere consequence of rising crime rates or the loss of faith in penal-welfarism, but rather the product of a series of responses to the cultural and political conditions of late modernity. More specifically, modern institutions of crime control and criminal justice are deeply marked by cultural formations, reactionary politics, and the new social relations that emerged around the changing structures of work, and welfare. (Rosen, 2023, pg.177)

Methodological considerations

To effectively explore my research focus, a comparative analysis is essential. This approach allows me to thoroughly examine two distinct cases. The rationale behind this method is rooted in several key factors. Firstly, I consider the contextual matters to address, including the geographical locations and criminal gangs involved. Secondly, I recognize the striking parallels evident in policymaking within these contexts. Thirdly studying these cases provides invaluable insights into the dynamics of societies tackling with violence and criminal activities, primarily fueled by illicit drug activities. I am, gaining an in-depth knowledge of systemic issues such as the disregard for fundamental human rights not only from a governmental perspective but also from a societal approach.

In this text, I will employ various analytical methodologies to explore the historical evolution of these countries' constitutions, laws, and decrees regarding human rights guarantees. Through meticulous analysis, I aim to unravel the intricate threads of legislative development over time, tracing the trajectory of legal frameworks from their inception to their current form. Also, by

¹ Noboa's approach in Ecuador appears partially inspired by the iron-fisted crackdown carried out by El Salvador's president, Nayib Bukele, against gangs in that country. The wildly popular leader's heavy-handed and perhaps successful suppression of street gangs has made him a rock-star influencer among Latin American politicians who hope to achieve some of his sparkle by enacting punitive measures of their own. Indeed, earlier this month, Noboa referenced Bukele's mega-prison in a promise to build his own. "(The Guardian, 2024)

employing tools, seeking to uncover the underlying socio-political dynamics, ideological changes, and contextual factors that have shaped the evolution of legal systems. Furthermore, I aim to scrutinize the impact of pivotal historical events, such as revolutions, reforms, and societal transformations, on the formulation and implementation of legal frameworks.

Moreover, there are several compelling reasons for the importance of conducting a comparative analysis in this research: First, a comparative analysis allows for the exploration of theoretically postulated relationships in which societal characteristics serve as crucial independent variables. By using a comparative research design, I can allow some of these variables to vary, thus facilitating a deeper understanding of their effects.

Second, another potential use of comparative analysis is to investigate whether relationships observed in one society hold in others. This involves explicitly incorporating societal characteristics into the research design so that I can examine how variables that may have been controlled for in one society vary across contexts. The selection of these variables is informed by our theoretical explanation of the correlations between societal characteristics and the dependent variables of interest.

Additionally, comparative analysis helps to determine the influence of conditions that may be fixed or given in one society. Often, after conducting a study in a society, researchers face criticism that observed relationships may be due to uncontrolled variables. This highlights the importance of investigating whether specific conditions exert influence in various societal contexts. For instance, in the case of Colombia and El Salvador, both countries have undergone transitional justice processes following their internal conflicts.

Finally, comparative analysis allows for a holistic examination of a small number of empirical cases, helping to understand the causal processes behind observed similarities and differences. This can involve either working forward from cases with similar conditions to anticipate similar outcomes or working backward to identify differences in causal conditions that parallel similar or different outcomes. Overall, comparative analysis provides a clear framework for investigating complex relationships and causal processes across diverse societal contexts.

In other words, the idea behind these methodological considerations is to address the research question in the best way possible to obtain more accurate results. This is why it's important to explore and compare not only Latin American systems but also to examine how similar issues are developed and studied, especially within constitutional frameworks, are developed and studied in other regions such as the European Union and the United States of America.

Since comparative analysis is interested in the general, not the specific or the unique, it inevitably simplifies and leaves out a lot of the full complexity of reality. Hence it is not a substitute for description or for the detailed analysis of a single case. Moreover, it is not superior to the latter. It has quite different aims. It follows that there is a complementarity between 'thick description', detailed analysis of a single case, and comparative analysis. (Pickvance, 2001).

Feature	Variable-oriented strategy	Case-oriented strategy
Goal	Achieve generality	Appreciate complexity
Focus	Test propositions derived from general theories	Unravel the historical conditions that produce different historical outcomes
Statements sought	Probabilistic statements relevant to broadly defined categories	Invariant statements relevant to more narrowly defined categories of phenomena
Causation assumption	Quantitative causation	Presence/absence causation

Table 1. Contrast strategies of comparative analysis (Ragin, 1997 pg.54)

Additionally, this comparative exercise will analyze the right to legal representation, examining how each country ensures access to legal counsel for all accused persons.

This means respecting constitutional and human rights. Finally, the study will examine the prohibition of torture and cruel, inhuman, or degrading treatment, comparing the legal safeguards and oversight mechanisms in place in both countries. The analysis of these specific rights will provide a contextualized explanation of how Colombia and El Salvador address (or not) fundamental rights within their criminal justice systems.

In the case of Colombia, I will examine four main legal instruments concerning the rights of detainees. First, the national constitution serves as the most crucial norm, as it includes fundamental rights and international conventions on human rights. Second, the national criminal code is another essential element since are the specific norms and regulations that are applied to a concrete situation. Third, I will analyze the transitional justice mechanisms implemented in Colombia, starting, which marked the initial implementation of transitional justice under our constitution, the Colombia-FARC agreement. Then, I will consider the current decree issued by the President of Colombia.

In the Salvadorian case in order to make a coherent comparison, I should first look at the "Magna Carta,"² which was developed in 1983 in a context of bipartisanship and structural violence. In addition, I must consider the penal code and the decrees issued by the current president, Nayib Bukele. These give him the legal authority to enforce and suppress certain constitutional rights under the pretext of declaring war on gangs.

These are the guiding considerations for the development of this research. The analysis will delve into emerging trends and projections on the topic, with a focus on potential impacts on the Latin American context in the coming years. My primary objective in this research is to provide a clear description of this issue and its implications for the region.

In addition, I seek to identify both opportunities and challenges, as well as possible ways to address them effectively. In doing so, this study aims to contribute valuable insights to the ongoing discourse on the topic and to inform decision-making processes not only in Latin

²The Meaning and Legacy of the Magna Carta: "The Great Charter" in Latin. Although social scientists and legal scholars routinely describe the Magna Carta as foundational for concepts of justice and liberty, the charter itself is rarely assigned in political science classes or scrutinized by political theorists. The aim of the symposium is twofold: first, to affirm the document's historical rootedness and intellectual richness, and, second, to explore the ways in which the Magna Carta's text and reputation have informed the development of common law and modern politics. (Worcester, 2010 pg. 451)

America but beyond its borders. Furthermore, it is imperative to emphasize the importance of studies designed to examine the impact of public policies applied within systems over time. Through research and surveys, I can identify the long-term effects of fundamental societal changes, shifts in criminal behavior, and advances in the recognition of human rights.

According to Koppenjan and Klijn, writing from a public management perspective, ‘uncertainty’ is a core feature embedded in all the institutional and knowledge aspects of our attempts to deal with ‘wicked’ problems. However, this approach is argued in the present paper that uncertainty is inherent in all areas of social life, and even high levels of uncertainty may not be sufficient to tip an issue into the category of wicked problems it is also necessary to explore levels of complexity and the extent of value-based divergence among stakeholders. (Head, 2023)

Now, one might ask, why not adhere to just one theoretical approach? The strengths and criticisms outlined in the section make it clear that relying on a single approach would limit the analysis. Why is it important to compare Colombia and El Salvador? This study examines the justice systems of Colombia and El Salvador, providing valuable insights by exploring their shared history of violence and their different responses to it. Both countries have faced long periods of violence, driven by different factors and actors. By comparing their criminal laws, I can understand how each legal system has adapted to their internal conflict, drug trafficking, and gang violence. Both countries have implemented legal reforms to improve their justice systems and protect human rights.

Both Colombia and El Salvador guarantee fundamental rights in their criminal justice systems. This study examines how these principles are addressed in their laws and implemented in practice. Comparing judicial practices reveals how similar legal frameworks can be interpreted and applied differently. By comparing their juridical approaches, researchers can identify what works best to reduce violence and crime. This analysis also provides insights into how cultural differences influence legal systems.

This comparison shows how each country's criminal justice system impacts human rights, offering lessons on how to protect those rights within different legal frameworks. It also contributes to the global discussion on the role of criminal justice in upholding human rights. Additionally, exploring how each country tackles transnational crimes like drug trafficking and gang activity reveals the effectiveness of international cooperation and legal frameworks in combating these issues.

Comparing legal frameworks provides additional advantages by using systematic methods to analyze similarities and differences, leading to more reliable insights. This comparative analysis of Colombia and El Salvador’s criminal laws enhances how different juridical systems address similar challenges and inform policy development. It contributes to the broader field of comparative studies by providing insights into the interplay between law, society, and human rights.

The goal is to address this issue holistically providing a nuanced understanding of this multidimensional problem, which cannot be fully explained by just one perspective or approach meaning that establishing the criteria that will be used is vital.

Background

In contemporary discussions of human rights, there is often a debate about the origins and implications of the concept. A common critique is that human rights are perceived as a concept rooted primarily in Western ideology, serving as a mechanism for political and cultural domination by Western capitalist states over other societies. This critique has two main aspects: the historical and normative foundations of human rights, and the political dimensions of their interpretation and implementation. (Forst,1999) Concerning this, it is crucial to examine the critique in greater detail, particularly about the source of the critique and the specific policies or institutions it targets.

The assumption that human rights are essentially a "Western" concept can lead to different practical consequences. Huntington rejects universal human rights as a manifestation of Eurocentric arrogance or as an illusion doomed to collapse, Huntington is convinced that universalism of human rights is bound to fail. For people from other civilizations, he says, the only way in which to have full access to human rights is to adopt essentially "Western" values and hence to implicitly convert to Western civilization. (Bielefeldt, H. 2000 pg. 90)

Understanding that it is relevant to comprehend the context of how human rights are implemented, I can see that over the course of several decades, many Latin American nations have applied an "iron fist" approach, colloquially referred to as "mano dura," to confront a range of societal challenges. This strategy typically involves strengthened police and military presence, accompanied by stringent punitive measures including extradition typically to the United States of America.

Beyond proposals for longer prison sentences and more police on the streets, what is often called penal or criminal populism, politicians have pushed mano dura policies to achieve it. Mano dura policies represent Latin American Research Review a more radical trend, in which institutional weakness is used to undermine core tenets of "third wave" justice reforms. Colloquially, mano dura refers broadly to repression The literature in political science and sociology uses the term as shorthand for a variety of concepts: informal police brutality politicians with authoritarian tendencies, and illiberal or non-democratic political preferences. (Holland, 2013, pg. 42)

This expectation arises from society's waiting for significant impacts and immediate results, particularly regarding illegal armed groups, gangs, and drug cartels in Latin America. These entities have long posed severe threats to the safety and stability of the region and one of the most popular ways to deal with it has been the so-called mano dura.

Firstly, mano dura policies introduce discretionary crimes, which are laws granting police the authority to apprehend suspected criminals based on subjective evidence. A prominent contemporary illustration of this is seen in associational laws. In addition to these discretionary crimes, another category long prevalent in Latin America penalizes minor offenses like loitering, public nuisance, and vagrancy. The expansion of crimes permitted under mano dura policies goes hand in hand with a decrease in guarantees of procedural rights for suspects. Reforms in criminal procedure, advocated by international donors in the 1990s, delineated strict boundaries concerning pretrial detentions, proscribed extrajudicial confessions, restricted unauthorized searches and seizures, established safeguards for minors, and heightened evidentiary requirements. Mano dura policies have the potential to undermine these hard-won, albeit fragile, reforms. In this regard, they diverge from their North American counterpart, zero tolerance. (Holland,2013 pg. 47)

For instance, let's analyze the table number two which illustrates imprisonment rates in various Latin American countries. This data offers valuable insights into the broader patterns of behavior across different nations. By analyzing this information, I can gain a complete view of the incarceration trends in these regions. This data serves as a useful tool for comparing and contrasting the approaches to criminal justice and imprisonment policies adopted by different countries. Furthermore, it allows us to identify any notable disparities in the way various nations handle their judicial systems and manage their prison populations even though I will just focus on 2 countries.

Additionally, having this input can help the research to develop a timeline where it is possible to identify crucial events that have shifted approaches, including the elections of Nayib Bukele in El Salvador and Gustavo Petro in Colombia. This analysis can explore the link between these events and political activities, as well as their impact on fluctuations in crime rates, including both increases and decreases, and their correlation with incarceration rates.

Table 2 on Changes in prison population rates of Latin American countries International Centre for Prisons Studies. (Iturralde,

Country	Prison Rate Per 100,000 inhabitants	2014–2016	Percentage Increase
El Salvador	139 (1998)	554 (2015)	298%
Paraguay	60 (2000)	180 (2015)	200%
Venezuela	58 (2000)	166 (2014)	186%
Ecuador	63 (2001)	165 (2014)	162%
Peru	101 (2001)	228 (2014)	125%
Costa Rica	160 (1998)	352 (2014)	120%
Colombia	115 (1998)	249 (2016)	116%
Mexico	101 (1995)	214 (2014)	113%
Brazil	134 (2000)	275 (2014)	105%
Guatemala	62 (2000)	124 (2015)	100%
Uruguay	154 (2001)	279 (2014)	81%
Argentina	99 (1998)	160 (2014)	61%
Panama	280 (2000)	426 (2015)	52%
Bolivia	95 (2000)	130 (2014)	37%
Nicaragua	128 (2000)	171 (2015)	33%

2018 Pg 688)

This table alone cannot provide us with a clear explanation of how punitive measures have been implemented throughout Latin America. It simply presents numerical data. The importance of this data lies in its ability to shed light on the broader context and underlying reasons for the observed increases in imprisonment rates. These increases could be attributed to various factors, such as demographic shifts, political or socioeconomic crises, or other contextual variables. It is therefore relevant to explore deeper into the context surrounding these statistics in order to identify the underlying causes of the trends shown in the table.

As a society, I have now gained the ability to identify different perspectives over diverse problematics, including the various factors that contribute to legal and cultural behaviors that affect incarceration rates. I can also understand important problems related to this, such as human rights violations in prisons and the problem of overcrowding as a result of an outstanding increase in imprisonment. This, in turn, amplifies the significance of any potential "achievements". Therefore, maintaining a critical perspective is crucial, as it provides citizens with the necessary tools and platforms to scrutinize government decisions, policies, and actions.

The assumption that civil society activism is per se conducive to democratization seemed borne out by the historical experience of the 1980s and early 1990s when democratization processes in Eastern Europe and Latin America were very rarely discussed without referring to the importance of civil society. The rapid rise of civil society organizations, promoting diverse issues ranging from human rights to governmental accountability. (Cavatorta,2012 pg. 35)

Considering all the elements described previously, like the Westernized concept of Human rights, I will directly address the Colombian context by providing a historical and political review. This will offer a bigger scope of how these issues have evolved over the last few decades until recent years and have shaped the Colombian juridical culture regarding the criminal system, describing these specific country behaviors is essential, as it is impossible to grasp their actions without first studying these factors.

Colombian context

Colombia, like many nations, has undergone significant political, cultural, and economic transformations. Internal conflicts, particularly those exacerbated by the unescapable influence of drug trafficking and transnational criminal activities, since they have played a decisive role in shaping the country's criminal policies. Colombia's geographical features created ideal conditions for cultivating illegal crops, attracting a large and readily available labor force. This fueled a powerful drug dealing industry. The resulting profits empowered drug cartels in the 1980s, leading to violence and instability. These profits also strengthened armed rebel movements in the 1990s and early 2000s, further perpetuating the cycle of violence.

Furthermore, poverty and lack of opportunities in rural areas created fertile ground for belligerent groups like gangs and rebels. These groups exploited the desperation of these communities, offering a twisted form of subsistence through violence. This cycle was self-perpetuating, as new recruits joined these organizations, expanding their power and influence. In response, Colombia embarked on a path of reform, culminating in the adoption of a new constitution and the enactment of a stricter criminal code, renowned for its harsh penalties targeting drug-related offenses.

This occurred through a process known as the "septima papeleta," which engaged all sectors of society in the development of a new constitution, aligning it with contemporary realities. Furthermore, it drew legal inspiration from Western European countries concerning constitutional matters and criminal legislation. Notably, its structure and approach bear a closer resemblance to a Hispano-American trend. The introduction of a severe criminal code coincided with the inception of Plan Colombia in 1998. This pivotal initiative, backed by the United States, arose during the post-Cold War era to combat a pressing transnational threat: the

widespread drug production controlled by the Colombian guerrilla group, the Revolutionary Armed Forces of Colombia (FARC).

the argument that the Colombian guerrilla movements can accurately be characterized as criminal organizations, the specific example of oil pipeline attacks is reconsidered in relation to the five points outlined by Schelling. By demonstrating a set of actions motivated by economic gain, the claim of monetary rather than revolutionary political objectives are forwarded. Here, a clear revolutionary alternative political alternative exists: force the imperialist oil company to leave the country through continued, unrelenting attacks. (Offstein,2003 Pg.117)

The assistance provided under Plan Colombia transcended mere financial aid; it also encompassed logistical and methodological support. For instance, some practices were either abolished or reformed, including architectural changes aimed at fundamentally reshaping the application of law and procedures. This transformation aligns with the insights of scholar Ola Söderström, who interpreted this shift as:

“introduction of US-inspired prisons in Colombia inaugurated an unprecedented pattern of isolation operating at different levels: on a regional scale, with the relocation of a large part of the prison population in ‘deurbanized’ correctional facilities where contacts with the social and family environment are drastically weakened or destroyed; and on a local scale, through an architectural and normative arrangement aiming to break the collective dynamics and eliminate the significant margin of freedom that characterized the Colombian prison system” (Dardel, J., & Söderström, 2018 pg. 24)

Accepting U.S. support proved indispensable in shaping Colombian criminal law. During this period, the proliferation of drug cartels surged, flooding Colombia with cocaine. This influx not only posed significant security threats but also affect negatively Colombia on the global stage, labeling it as a challenging and non-desirable territory. Consequently, Colombia's international reputation suffered, impeding its economic development prospects and affecting the well-being of its population.

In response to these challenges, collaborative efforts with the United States were crucial, not only in addressing the immediate threats posed by drug trafficking but also in reshaping Colombia's legal and institutional frameworks to effectively combat organized crime. President Andrés Pastrana was elected in 1998 with a clear mandate to seek negotiations with guerrilla groups, mainly FARC. These negotiations, known as the Caguán peace talks, began in 1999 after President Pastrana ordered the Military Forces to withdraw from an area of approximately 42,000 km² to host the peace dialogues. After three years of negotiations, with few substantial advances and declining public support, President Pastrana suspended the dialogues and ended the Demilitarized Zone in February 2002. This marked the beginning of a new escalation of violence in the Colombian conflict, primarily driven by state initiatives and opposed by FARC's diminishing military power.

Moreover, the failure of the Caguán peace talks, primarily due to the actions of the FARC, proved to be a decisive moment³. This event unfolded in 1998 and persisted through the

³ The 1999-2002 Caguan peace process with the FARC originates when the Colombian state unilaterally yields to this group the clearing of a demilitarized zone, known as “Zona de Despeje, in the South of the country to further peace conversations. As we know now it ends in a colossal failure after

presidency of Álvaro Uribe Vélez (2002-2010), cementing Colombia's "iron fist" approach, which remained in place until 2010 when President Uribe finished his constitutional mandate, this was even evident in its campaign phrase, which colloquially translates to "firm hand, big heart." Resembling what was going to be his state policy during his term.

During Uribe's presidency, the military became stronger and developed new alliances with Israel and the USA regarding technology and training methods. This significantly improved relations between Colombia and the USA concerning security, which was one of the top priorities of the president at that time. Uribe changed the narrative on what was considered terrorism after 9/11 and the Patriot Act most concretely with the Guerrillas ELN, FARC, and EPL⁴.

This was the central theme of Uribe's presidential campaign, and it was reinforced by the FARC's launching of mortar attacks on downtown Bogotá in the midst of his inaugural ceremony. Three aspects must be kept in mind when considering the state-of-siege declaration. First, the focus of the declaration, as well as the subsequent legislative decrees promulgated by the administration, has been to restore public order. It is a narrowly construed declaration, not one that allows Uribe to legislate in all areas of public policy. Thus, the principal measures enacted under the state of siege have all been related to strengthening the ability of the state security forces to confront and defeat violent armed actors. (Dugas, 2003 pg. 117)

Uribe saw an opportunity to identify the FARC as terrorists, linking and comparing them with groups like al-Qaeda, in order to modify the perspective in the world regarding Colombian guerrillas. His strategic repositioning not only reshaped international perceptions but also laid the groundwork for more effective counterinsurgency measures and diplomatic engagements. This bold initiative not only aimed to align Colombia's struggle with the global war on terror but also required gathering international support in combating insurgency within the country. This was not the only thing that changed during these years, he promoted state institutions and so improved their legitimacy.

At that time, the political-electoral representation system lacked full credibility, leaving significant segments of society feeling either unrepresented or not satisfied with the Congress or the previous presidents. To address this, an economic policy signaling stability, alongside a social policy focused on poverty alleviation and job creation, was implemented trying to get international investors principally in the oil production. Moreover, Colombian democracy demanded defense and consolidation beyond mere election cycles, necessitating robust measures to ensure the rights of all citizens were upheld. This included safeguarding public liberties not only nationally but also at regional and local levels, facilitating diverse social and political voices to express opinions and critique governmental strategies across various domains always all this required a holistic approach to respond effectively.

The direct effects of the so-called authoritarian or *mano dura* policies were significant. The agency responsible for data and analysis DNP in Colombia reported during the period from 2006 to 2008 diverse items regarding security. the reduction in homicides of trade unionists was of 86%, reflecting a tangible increase in safety across various sectors. Additionally,

almost three years of conversations in which the FARC grew militarily and used the Zona de Despeje as a depository of kidnapped individuals, weapons and illicit drugs. (Bayer, 2013)

⁴ Ejército de Liberación Nacional (ELN), Fuerzas Armadas Revolucionarias de Colombia (FARC).

kidnappings experienced a sharp decline, plummeting from 2,882 cases in 2002 to 282 cases in 2010.⁵The positive trend extended beyond homicides and kidnappings. Pipeline explosions decreased from 86 to 31, power tower explosions fell from 483 to 39, road explosions dropped from 248 to 45, and remarkably, there were no reported bridge explosions by 2010.

Table 3 will provide examples of the results of his presidency in this specific field.

Indicator	Result 2006	Result 2007	Result 2008	Percentage Increase
Demined minefields under military jurisdiction	3	7	14	63.60%
Criminal gangs serving drug trafficking, dismantled by information from the DAS	2	1	4	25%
Cases of infrastructure supporting terrorist organizations dismantled by information from the DAS	3	6	5	100%
Major corruption organizations dismantled by information from the DAS	3	4	5	60%
Drug trafficking and money laundering organizations dismantled by information from the DAS	6	7	6	33.30%
Migrant trafficking organizations dismantled by information from the DAS	2	2	3	133.30%
Hostages rescued with extortion lines thanks to information from the DAS	25	16	18	33.30%
Town attacks per year	4	1	N/A	100%
New police stations built nationwide	0	9	144	12.50%
New police services in the national territory	0	18	N/A	N/A
Tons of cocaine hydrochloride and coca base seized	180	161	119	108.70%
New cities and municipalities with line 123 (emergency line) in operation	5	76	24	32%
New cities and municipalities with video surveillance systems in operation	13	8	12	16.70%

Cut-off date: June 30, 2008. Source: Government Goal Tracking System. Pg.14

Furthermore, significant steps were made in combating drug production, with almost 100,000 hectares of coca eradicated by 2010, at that time was impossible to eradicate them manually due to the heavy confrontations so it was made by plane. These statistics underscore the effectiveness of strategic measures implemented during this period, resulting in a notable improvement in Colombia's security situation. (Colombian national statistic corporation, DNP, DANE)

The circumstances in Colombia during his presidential period made him extremely popular. This was evident with the election of his Defense Minister, Juan Manuel Santos, which served as a testament to his legacy and the public's desire to continue with the same policies. Juan Manuel Santos victory not only reflected widespread support for the existing administration's initiatives but also signaled a collective endorsement of their approach toward addressing the

⁵ This due to Uribe's re-election in 2006 after his 4-year period.

country's challenges. It underscored a continuity of vision and strategy, emphasizing a commitment to stability, security, and progress.

The biggest argument is that handpicked successors of charismatic leaders can achieve success by engaging in a process we call tightrope walking, in which the successor forges strategic alliances with specific actors from within and beyond the predecessor's movement. Through this process, the successor can temporarily broaden his/her coalition and increase his/her reserve of political capital, the set of skills, relationships, and reputation that substantiate a leader's authority (Bennister, 2013 pg.7)

However, President Santos's approach to crime and punishment changed significantly during his time in office. Initially continuing the legacy of his predecessor, he intensified efforts against narco-trafficking criminals and guerrilla groups, striking decisive blows. However, in recognition of Colombia's significant military victories against the FARC and criminal gangs, he decided to change his policy to a more conciliatory approach. Understanding that the landscape had evolved, he sought avenues for dialogue and reconciliation to address root causes and promote sustainable peace in the country.

Regarding public order issues, President Santos highlighted the significant progress made under his administration. He emphasized that upon assuming office, Colombia witnessed a remarkable decline in criminal activities. Specifically, there was a reduction of almost 90% in kidnappings and an 80% decrease in terrorist acts, as reported by the National Planning Department in 2011. This achievement was attributed to the implementation of policies outlined in the National Development Plan (PND) for the period 2010-2014. According to the PND 2010-2014, by 2010 Colombia had reclaimed sovereignty over the majority of its national territory. This territory, previously under the influence or domination of illegal armed groups, had been successfully recovered. The president's remarks underscored the administration's commitment to restoring peace and security across the nation. (Cabezas, L. P. 2017).

Juan Manuel Santos was awarded the Nobel Peace Prize for his essential role in orchestrating and supporting the Colombian peace process with FARC, which marked a significant departure from traditional approaches to prisoners' rights and criminal law. Widely recognized as a landmark event in Colombian history, the process represented a profound change from previous peace initiatives, which had often ended in failure. By introducing innovative tools and strategies that will be detailed in Table 2 that compare 2 peace processes in a 10-year gap, where the government was able to forge a more robust and comprehensive peacebuilding framework. This new approach not only addressed the long-standing grievances of various stakeholders but also fostered a different appreciation of human rights perspectives.

The Colombian peace process introduced a variety of innovative mechanisms and methodologies aimed at addressing the root causes of conflict and building sustainable peace. Additionally, the peace agreements included comprehensive provisions for reparations to victims, transitional justice, and the reintegration of ex-combatants into society the so-called resocialization process.

Table 4: Differences in the design of the two latest peace negotiations with the FARC

	Caguán process (1999-2002)	Havana process (2012-2016)
Goal	Political, economic, and social transformations to build a new state based on social justice	To put an end to the armed conflict
Assumptions	Negotiations will lead to an agreement that will address all the root causes of the conflict	Negotiations will stop the war and enable a new phase that will allow for inclusive, transparent deliberation and decision-making on the root causes of the conflict and additional challenges that have developed over the past years
Agenda	Broad, including economic, legislative, justice, and security reforms	Narrow, focusing on rural development and guarantees of political participation
Actors	The government and the FARC saw themselves as the true representatives of society	The government and the FARC understand the need for public participation and democratic decision-making
Ceasefire	Yes, but only in the demilitarized zone. Violence by all actors increased during the talks	No. The FARC has declared unilateral ceasefires and the government has responded with conflict "de-escalation". Battle-related deaths virtually stopped in early 2016
Public participation	Symbolic. The parties organized public hearings, but people's inputs were never seriously analyzed and considered	Fundamental, especially in the post-agreement phase. Multiple formats for direct and indirect participation
Role of victims	Absent in the negotiating agenda and the peace talks	Fundamental in the negotiating agenda. The parties have jointly invited five delegations of victims (60 people in total)
Role of women	Not mentioned	A Gender Subcommission has invited three delegations from women's organizations (18 people in total)
Time Frame and frequency	Open-ended (extending over years), with on/off talks	Urgency to complete the negotiations. Frequent and intense sessions interrupted by short periods of consultations
Developments	The parties became bogged down in procedural issues and never discussed the substance of the agenda	The parties have almost completed the agenda they set out to discuss (although this has taken them longer than they initially envisioned)

(Herbolzheimer, K. 2016 pg. 3) Innovations in the Colombian peace process.

As is possible to see in the table Colombia shattered the misleading notion that peace and justice are mutually exclusive. It has shown that genuine peace cannot exist without respect for human rights, just as human rights cannot flourish without a foundation of peace. Respect for human rights is emerging as a fundamental keystone that is essential for progress in post-conflict situations. Indeed, the commitment to human rights will serve as an important benchmark for assessing positive changes after the conclusion of the peace process. It is imperative to recognize that true peace includes the protection and promotion of human rights, thus underscoring the inextricable link between justice, peace, and human dignity.

Under the peace process was needed the establishment of ad hoc tribunals that function within the framework of transitional justice. This development marked an essential evolution in legal criminalistic and human rights approaches. This innovative strategy highlighted the urgency of confronting the intricate realities of past conflicts while simultaneously paving the way for reconciliation and societal healing.

These tribunals functioned as specialized mechanisms, meticulously designed to investigate and prosecute transgressions committed during periods of civil unrest. Their primary objective was to ensure perpetrator accountability while acknowledging the crucial need to temper justice with empathy and understanding. This agreement led to the revision of previously established norms and, years later, culminated in the election of Gustavo Petro as Colombia's first left-wing president.

The context of political transition encompasses a setting in which past political, collective, and widespread criminality, which commonly amounts to international crimes and grave human rights violations, is being addressed while new political power structures are being created or consolidated. In this context, broad societal goals such as justice, democracy, rule of law, or

reconciliation are pursued while at the same time they are being debated and contested, (Capone, F. (2018). An overview of the DDR process established in the aftermath of the revised peace agreement between the Colombian government and the FARC (Global Jurist, 2017)

This is not a minor issue for a country deeply affected by the Cold War's influence and the proliferation of insurgent militias and guerrillas, spawned from communist ideology. Colombia had never anticipated electing such a leader, especially after enduring the scars of war and the loss of countless innocent lives. However, he emerged as a charismatic leader, despite being a former guerrilla member of M19, infamous for assassinating Supreme Court magistrates and kidnapping the Dominican Republic embassy, and known for the amnesty this is better explained by John Neagle who described the process.

On Oct. 18, the Colombian government submitted to the national congress a constitutional reform bill that would provide amnesty for leftist guerrillas. Under the new law, individual guerrillas or guerrilla organizations would submit formal requests for amnesty, and a government commission would have two months to render a decision on each individual request. The amnesty does not apply to guerrillas guilty of crimes committed outside the context of combat, e.g., those who killed persons who had no means of self defense, or who have participated in terrorist attacks promoted by drug traffickers. The amnesty legislation is part of a negotiated settlement between the April 19 Movement (M-19) and the Colombian government completed in October. Under the agreement, the guerrillas would disarm upon receiving amnesty. M-19 requested that members be permitted to turn themselves into an international organization such as the United Nations, the International Red Cross, or Germany's Green Party. (Neagle, 1989 Pg.2)

Subsequently, new policies were introduced into the Colombian juridical framework as a consequence of his vision and policies. These included modifying the criminal codes, rethinking approaches to criminality, and proposing reforms to traditional institutions such as the police and military. Initially, these policies were lobbied in Congress, but they did not succeed due to insufficient support meaning that even if he had won the presidency, he also needed vital support from former traditional parties to pass this law. After this first attempt, he modified his tactic, adopting a new banner termed the "human perspective view of society," and declared a decree trying to regulate what he couldn't under the ordinary law that the government was lobbying in the congress.

Gustavo Petro has taken concrete steps to follow through on his commitment to achieving "total and integral peace." On August 20, 2022, he issued a decree suspending arrest warrants and extradition requests against ELN peace negotiators in Cuba. He also reaffirmed protocols signed in 2016 to facilitate the resumption of dialogue with the ELN. Additionally, Petro extended invitations to neo-paramilitary groups and criminal bands to negotiate with the government, offering incentives such as ruling out extradition to the United States for serious talks. This initiative acknowledges the fragmented nature of Colombia's conflict, with various guerrilla groups, re-armed FARC guerrillas, paramilitary groups, and criminal actors operating within the country and along its borders, often clashing with each other and state security forces (Maihold, press, 2022).

The "total and integral peace," fundamentally altered Colombia's approach to prisoner treatment and security strategies. It establishes a framework for engaging with armed groups that prioritize reconciliation and reintegration even if it means giving benefits towards them.

This framework will be further scrutinized to facilitate a comparative analysis of El Salvador's legal system, particularly regarding security and human rights principles.

Colombia's history reveals a long and complex path and several key factors stand out. Firstly, Colombia's unique geographical features, complex political landscape, and weak justice system all contributed to a period of extreme violence in the latter half of the 20th century. Former President Uribe initially responded with a forceful "mano dura" approach against rebel groups. Secondly, President Santos, recognizing the progress made against the insurgents through military means, took a radically different approach. He embarked on a peace process that aimed to address the root causes of the conflict, a significant shift from the previous strategy. The current president's policies also suggest a focus on temporary solutions rather than establishing long-term plans, highlighting the significant influence of the president's role in shaping Colombian policy. Finally, constitutional reforms proposed by Petro played a vital role in developing new strategies to tackle violence and criminal activity.

El Salvador context

El Salvador also has a long history of violence. Like Colombia, it has suffered from extreme violence for decades. The situation in El Salvador arguably deteriorated further following the Salvadorian civil war "The US played an active role in supporting the Salvadoran government during the civil war in its fight against pro-communist insurgents, which were viewed by the US government as part of a larger communist network" (Roumie,2018). While the exact cause remains debated, some scholars and historians attribute this escalation to the massive deportation policies implemented by the United States during the Clinton administration, this context shows some similarities shared with Colombia, and this is relevant since they have a common "ally" with the United States of America on their mano dura approach to fight against criminality⁶.

When deportees with gang histories and criminal records from California took to the streets, they encountered gangsters who venerated their style and mannerisms, as well as respected their experience with real gang culture in the United States. This would present many with an opportunity to influence and direct gangs in El Salvador. Existing gangs in El Salvador started to adopt the ways of returning gang members, and a process known as social remittance, which is the movement of symbolism, identities, and norms that accompanied the migration of deportees. This started the process and expansion of maras that would occur through social imitation based on migration and networking. In this way, deportees' influence would change and assimilate the gang culture dramatically (Roumie,2018 pg. 26)

These criminal policies precipitated three major challenges for El Salvador: First, the sudden influx of deportees overwhelmed the country's already strained resources. Still reeling from a prolonged civil war, El Salvador lacked the infrastructure to adequately accommodate a large number of returning citizens. This resulted in shortages of housing, job opportunities, and basic necessities, exacerbating poverty. Furthermore, these harsh conditions created fertile ground

⁶ After the peace accords were signed, successive rightist Nationalist Republican Alliance (ARENA) governments in the 1990s-2000s sought to rebuild democracy and implement market friendly economic reforms. ARENA proved to be a reliable U.S. ally and presided over a period of economic growth, but was unable to effectively address some of the country's deep-seeded problems, including inequality, violence, and corruption Hellin, J., Kanampiu., Metal silos bring food security to El Salvador.

for criminal activity, which became an increasingly appealing option for some given the lack of viable alternatives.

The escalating violence during El Salvador's civil war had already inflicted deep scars on society, with many young men hardened by experiences of violence and trauma. The return of hardened gang members deported from the United States, some possessing leadership experience, is viewed by some as a catalyst for the emergence of the Mara Salvatrucha (MS-13) gang. These individuals brought new criminal tactics and a ruthless approach that further destabilized communities already struggling with violence.

Mara Salvatrucha, better known as MS-13, who are mostly Salvadoran nationals or first-generation Salvadoran-Americans, but also Hondurans, Guatemalans, Mexicans, and other Central and South American immigrants, MS-13 members engage in a wide range of criminal activity, including drug distribution, murder, rape, prostitution, robbery, home invasions, immigration offenses, kidnapping, carjackings/auto thefts, and vandalism. Most of these crimes, you'll notice, have one thing in common they are exceedingly violent. (FED, 2008 pg. 14).

The third element was the pre-existing during the civil war, which found an excellent opportunity for recruitment among the newly arrived deportees, many of whom were young men with limited opportunities. The lack of support and economic hardship created a vulnerable population susceptible to gang recruitment. This influx of potential members, combined with the leadership skills of some deportees, is believed to have fueled the growth and expansion of MS-13, leading to a surge in gang violence and crime.

On July 13, 1988, Colonel Ochoa Pérez, Vice President of the National Assembly and a member of the conservative Alianza Republicana Nacionalista (ARENA) party, addressed growing public concerns about juvenile delinquency. He provided an assessment of juvenile gangs and proposed remedies for dealing with them. Colonel Ochoa Pérez attributed the rise of youth gangs to the harmful effects of the civil war on Salvadoran youth, combined with an ineffective government that had allowed leftist guerrillas and opposition forces to create chaos, leading to widespread anarchy. In response, many youths had formed "pandillas juveniles." He announced that the National Assembly would begin a thorough review of the Juvenile Criminal Code to determine whether legislative solutions could help combat youth crime. (Press July 13, 1988) showing clearly how this policy was adopted throughout the country.

The Salvadoran gang development extended into the early 2000s. By 2001, gangs began demonstrating a shift toward more criminal behavior, partly due to the influx of hard drugs such as cocaine and crack cocaine into the Salvadoran market. However, the critical catalyst for the transformation of Salvadoran gangs came from government intervention, specifically with the passage of the Mano Dura (Iron Fist) Law in 2003.

This government initiative aimed to combat gangs and rally public support in anticipation of the upcoming 2004 elections. It included a national law granting police officers the authority to randomly detain and arrest young men suspected of gang affiliation. Moreover, the initiative encompassed a significant media and public relations campaign aimed at portraying gangs as the primary perpetrators of violence and crime, this strategy was not consistent and was only seeking short-term results.

Scholar José Miguel Cruz emphasizes the importance of exploring the broad historical and socio-political context in analyzing the factors contributing to high levels of violence within a nation. Through rigorous analysis, Cruz has identified key elements shaping one of the most violent nations, highlighting the intricate interaction of historical legacies, societal dynamics, and political structures.

The implementation of the "mano dura" law, intended to curb gang activity, may have inadvertently backfired. In response, gangs adapted by strengthening their internal bonds and establishing a new hierarchy, likely in reaction to perceived disorganization in the crackdown. They also responded with a brutal escalation of violence, exploiting gaps in the legal system's approach. Furthermore, the state's reliance on extralegal measures opened doors for gangs to potentially exploit violence for their own gain. Ironically, incarceration, intended as a deterrent, provided access to criminal networks, further solidifying gang structures. Consequently, widespread imprisonment inadvertently created fertile ground for gangs to expand their reach and strengthen their organization within prisons.

News media play a central role in public agenda-setting and policy debates. As a space for the articulation of different interests and perspectives, the media constituted an important strategic resource in the ideological struggle over Mano Dura. The government relied on the media to sell the policy to the population, and the NGOs used the media to put forward an alternative view of the gang problem. The extent to which these actors met with success depended on their respective resource and their ability to use news production to their advantage. Selecting information that influenced the public perception of street gangs ostensibly gave the media power to promote or marginalize competing voices and policies (Wolf, S. 2017 press).

Political instability was a major cause of the country's problems. This instability led to a weakening of institutions, which had a cascading effect. Firstly, investors and tourists were frightened off, as a weak institutional framework discouraged investment and tourism, hindering economic growth. Fragile institutions also struggled to control gang activity, allowing them to operate with greater impunity. This led to extortion, not only by gangs but possibly with the complicity of some national authorities. Finally, a climate of fear and instability creates a chilling effect on civil society, making it more difficult to hold authorities accountable and to advocate for a positive change. This situation persisted for more than 15 years, creating a complex web of challenges for El Salvador, this phenomenon was also seen in Colombia with similar effects during the Pastrana presidency.

One of the most notable changes occurred in the Salvadoran landscape with the rise of Nayib Bukele as a presidential candidate. His candidacy marked a significant turning point in the politics and history of the country, leading to radical changes that set a landmark in economic, political, and societal perspectives. President Bukele swiftly dismantled bipartisanship with minimal resistance. Since the country transitioned to democracy in the early 1990s, it has maintained one of Latin America's most robust two-party systems.

El Salvador had one strongest two-party systems. But neither of its two parties the National Republican Alliance (ARENA) and the Farabundo Martí National Liberation Front (FMLN) ever adequately improved security or well-being in one of Latin America's most dangerous countries. The pact that created Salvadoran democracy produced a stagnant political class that was unresponsive to the plight of the people. Mired in bureaucratic and partisan fights and high-

level corruption scandals, both ARENA and the FMLN failed to solve key problems of crime and inequality. (Gamboa,2023).

He triumphed over the two established parties, seen as an outsider for his unconventional governing style. His previous success as a mayor, coupled with public disillusionment also a fractured political landscape, propelled him to victory. This mirrored the rise of Álvaro Uribe in Colombia's 2002 election, where voters weary of the traditional Liberal and Conservative parties embraced his outsider status and promise to overhaul the political system.

In February 2020, the president, backed by the police and army, defiantly disregarded the orders of the Constitutional Chamber of the Supreme Court and persisted with his uncompromising pandemic policies. This bold move not only undermined the authority of the judiciary branch but also eroded the independence of prosecutors, marking the dawn of a new era characterized by the leadership of one of the most combative presidents of our times. He implemented Bitcoin as a legal currency, swinging away from the traditional 'res pice polum' approach to the United States and focusing instead on a firm stance, as well as on saving money and combating corruption.

This bold display of executive power sparked widespread debate and controversy both domestically and internationally. Critics condemned the president's actions as a shameless assault on the principles of democracy and the rule of law. At the same time, supporters applauded his decisive leadership in the face of unprecedented challenges.

The state of exception entails a set of extraordinary measures to respond to massive disruptions of the public order, which extend pre-trial detention from 72 hours to 15 days, ease phone wiretapping, and restrict freedom of assembly and the right to a legal defense in court. These measures were the response to an extraordinary outburst of violence in March 2022, when one of the country's main criminal gangs, the Mara Salvatrucha (or MS-13), spearheaded a killing spree that left 87 people dead within a weekend, reportedly as a result of the breakdown of secretive negotiations with the government. (El Faro,2022).

Following the declaration of the state of exception Bukele encompasses a range of extraordinary measures aimed at addressing widespread disruptions of public order resulting from the mass murders committed by maras, looking for a chilling effect on the power struggle between gangs and the Salvadoran state.

In response to this alarming escalation of violence, President Bukele has taken bold and controversial measures to restore law and order. These measures include the deployment of military forces to high-risk areas and the imposition of strict curfews and security checkpoints. While these actions have elicited both support and criticism, they underscore the government's determination to confront the scourge of organized crime head-on and safeguard the safety and well-being of its citizens. These extremely restrictive measures will be subject to further in-depth study as part of the comparative analysis of the legal framework and the effect it has on the Salvadorian society since it modifies the way Maras were perceived and suddenly reached international popularity because of its controversial methods.

As a result of this, there was a wave of arrests based primarily on so called criminological stereotypes. The military presence in the streets was intensified, with a mandate to arrest individuals who showed the slightest signs of association with criminal organizations,

including the possession of tattoos associated with such groups. As a result, this approach led to a significant increase in arrests, exacerbating the problems of population, prison capacity, and overcrowding.

Prior to the implementation of the state of exception, there existed a severe overcrowding issue, with rates reaching 139%. This means that before Bukele arrived at the presidency there were issues regarding the prison population, it was anticipated that the situation would only worsen with the mass detentions that ensued. Indeed, reports from the Ministry of Security of El Salvador have substantiated this concern, revealing that, as of Thursday, May 4, 2023, a staggering 68,000 individuals had been detained under the exception regime, marking an unprecedented figure in the country's history. It is clear that the involvement of the military has gone beyond its traditional role, raising concerns about its perceived function not only as a law enforcement agency but also as an enforcer of its own brand of justice.

“Two years have passed since El Salvador's President Nayib Bukele launched a "war on gangs," embedded in a state of exception that has since been renewed monthly until now. The government claims to have arrested more than 80,000 gang members, projecting the image of an upfront battle against criminal organizations that has shown results in bringing down murder rates”. (*Breda, 2023 pg.1*)

This widespread approval of Bukele extends not only to his native El Salvador but also resonates with millions of citizens across the diverse landscape of Latin America. Take the case of Colombia, where rising crime rates have become a pressing concern. In the face of these challenges, recent polling data shows a growing affinity for the policies and methods advocated by Bukele. This trend underscores a broader shift in public opinion and suggests that his approach is gaining traction and popularity throughout the Latin American region.

In October 2022, Gallup reported that Bukele had an approval rating of 86% in El Salvador, making him the most popular leader in the region. The support for Bukele's “punitive populism” has surfaced mainly from the considerable reduction of crime resulting from the *mano dura* policy. In 2022, presidential reports showed a 45% reduction in homicides compared to 2021. Official data also highlight January 2023 as “the safest month in Salvadoran history,” with only eleven homicides, compared to the 740 killings of January 2016. (*Georgetown Security Studies Review. 2023*).

Concluding this section, From this short overview of the El Salvador's context, it is evident that it has experienced one of the most violent scenarios in the region. Although the “*mano dura*” approach was applied, complementary actions were not implemented, leading to the strengthening of gangs and violent groups. The transition of power and the massive deportation of people created significant problems that the government was unable to address. Finally, the figure of Nayib Bukele emerged as a savior with his populist policies, which even allowed him to modify the constitution and secure reelection. His focus on a punitive approach has led to a less free country, pushing it towards an authoritarian regime.

Ultimately exploring the conditions in these two countries has highlighted the importance of conducting in-depth studies and showing the shifting paradigms that are particularly evident in Colombia and intensified in El Salvador. These insights will enrich the comparative section, offering a clearer explanation of how each legal framework operates and adapts to the evolving political and cultural landscapes.

Up to this point, the theoretical and conceptual ground provided by the literature and scholars has been spread with the aim of finding the elements that will guide the analysis during the rest of the text this will be seen more clearly in the comparative section.

Comparative analysis

In essence, this comparative study facilitates an examination of the legal frameworks in question. By delving into the intricacies of each constitution and legal system, I identify key provisions, principles, and procedures that shape their approach to governance, particularly in matters of law enforcement and the treatment of individual fundamental rights within the criminal justice system.

Moreover, an in-depth analysis allows for a contextual explanation of the historical, cultural, and socio-political factors that have influenced the development of these legal structures. By examining the similarities and differences between jurisdictions, I can gain insight into each system. In addition, the process of comparative analysis serves as an essential tool for fostering a deeper knowledge of these legal systems and their implications for governance, justice, and human rights in these two countries.

As previously mentioned, this comparison goes beyond merely analyzing the framework. Its overall aim is to provide valuable insights into the possible effectiveness of different strategies or approaches in combating violence and crime. It's necessary to emphasize that this analysis should not disregard fundamental human rights since I need to compare if what is written actually is applied, having identified this aspect, our next step is to compare the legal provisions and explore their hermeneutic content and scope.

This process involves a thorough examination of the language used in each provision, along with an assessment of its intended meanings and implications for civil society. I also examine the purpose of these provisions, assessing the extent to which they address different facets of the issue at hand. By doing this detailed analysis, I can explore and get a full picture of how these laws tackle the challenges of violence and crime.

This legal system, codes, and decrees serve as one of the initial elements for comparison, providing us with raw data to assess the homicide rates in Colombia and El Salvador. It offers a starting point to understand how these countries are addressing their respective problems with violence. However, to gain a complete vision, I must delve deeper into additional criteria. Exploring other factors is crucial to unveil the underlying reasons behind these trends. By considering a broader range of indicators such as socioeconomic conditions, political dynamics, law enforcement strategies, and cultural influences, I can more effectively analyze the complexities of the situation and gain insights into the measures being taken to address violence in these nations.

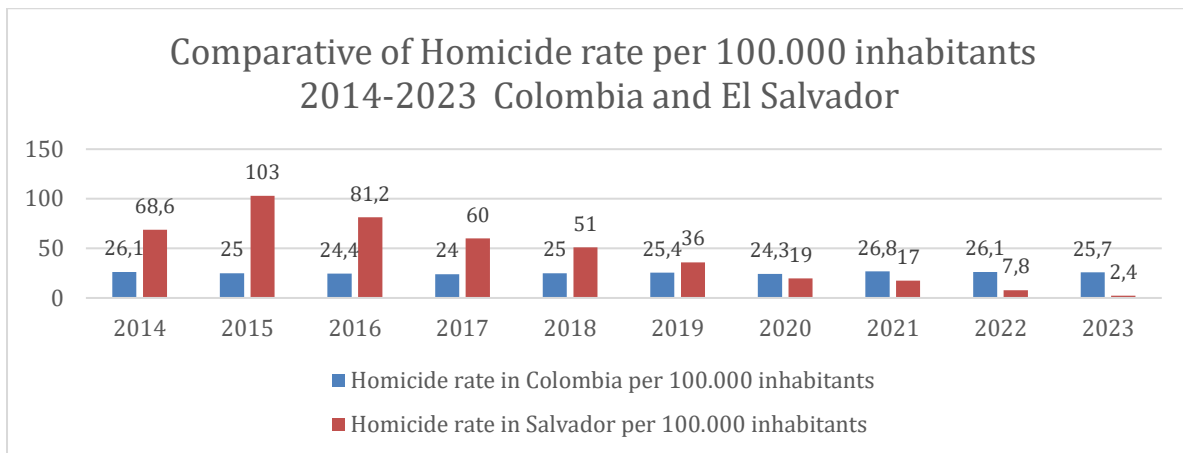


Table 5 UN Office on Drugs and Crime's International Homicide Statistics database.

Following this brief explanation, a comparison will be presented concerning national constitutions, with a particular focus on articles safeguarding the human rights of citizens. Subsequently, analysis will be provided on these legal provisions, delving deeper into their significance beyond a mere semantic analysis. This will involve an exploration of the practical implications and real-world applications of these constitutional guarantees, aiming to offer a comprehensive understanding of their broader implications for the protection and promotion of human rights within each respective State.

The structure that will follow in this section will be as follows: first, a brief description of each constitution, followed by an analysis of the legal provisions, comparing them in terms of semantics, hermeneutics, and human rights protection focusing on elements as the background and how they were created. Next, exploring into each specific penal code and proceed in a similar manner to compare them. Finally, I will examine the decrees in more detail, as it is on these elements that the investigation primarily focuses on with some case law and comparative analysis including other systems like the European and North American frameworks to get a bigger scope.

Nevertheless, it's crucial to recognize that all subsequent legislation must adhere to these fundamental rights in order to maintain coherence and consistency within the legal framework since I need to refer to the Kelsen pyramid visible in image 1 which establishes the normative hierarchy this will be useful to explain why is relevant to analyze first the constitutions before the criminal codes and the decrees in this research.

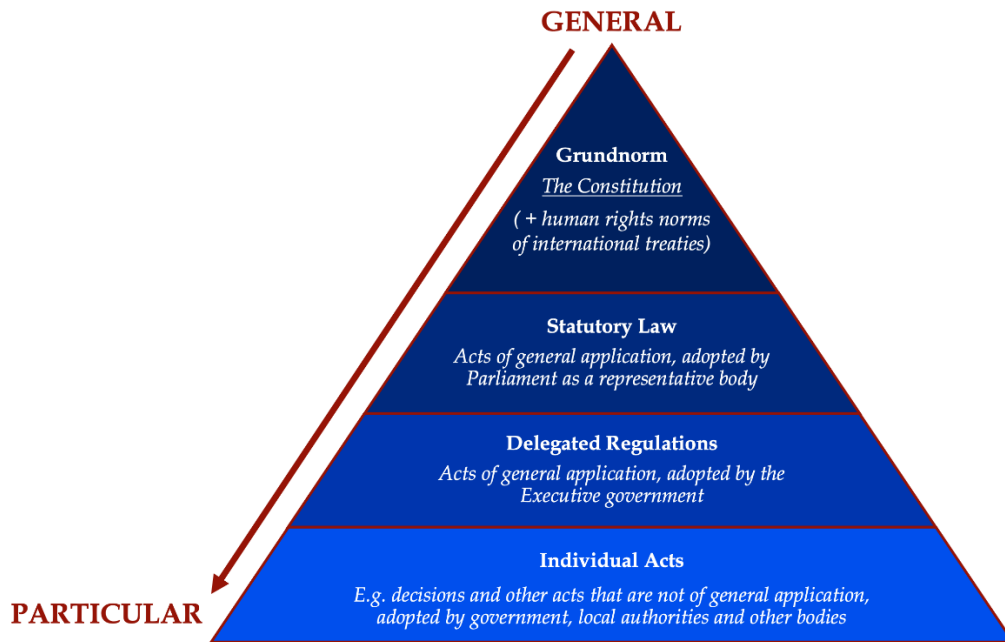


Image 1 Hans Kelsen's 'Pyramid of Norms' (Pure Theory of Law, 1967)

Other legal and constitutional systems

This also raises the question of how constitutional approaches work in other legal systems. A comparative analysis can be enriched by examining and addressing these paradigms in order to provide a broader understanding. This is particularly relevant given that two systems are considered to have the most advanced legal frameworks in terms of case law and constitutional development: the United States and the European Union.

Examining the constitutional approaches in the United States and the European Union can provide valuable insights into how these systems address similar challenges. The United States, with its well-established case law and robust constitutional context, provides a model of how constitutionalism can evolve and adapt over time. Similarly, with its unique supranational legal system and emphasis on human rights, the European Union offers a different but equally progressive perspective on constitutional development.

By comparing these systems, I can gain a deeper knowledge of the different ways in which constitutional principles are applied and evolve to address contemporary legal and societal issues. This comparative analysis highlights the strengths and weaknesses of different approaches and offers potential solutions and best practices that can be adapted to other contexts.⁷

⁷ When discussing Europe, it is important not to overly simplify the hierarchy between national systems and the supranational regulatory level. The EU does not possess a formal Constitution; instead, it operates based on an establishing Treaty that has been reformed multiple times. From the EU's perspective, Union law takes precedence over national law. However, Member States often assert that their constitutions take precedence over European law. For instance, the Italian Constitutional Court

To explore these systems, I can begin by examining the United States Constitution, which is the oldest written constitution still in use. It has a demanding and bulky amendment process that requires the approval of three-fourths of the states, making it one of the most difficult to amend. In addition, its susceptibility to reinterpretation is limited by the inertial force of judicial precedent.

The United States Constitution has three primary functions. First, it creates a national government consisting of legislative, executive, and judicial branches, with a system of checks and balances among them. Second, it divides power between the federal government and the states. Third, it protects various individual liberties of American citizens.

Judgment power is crucial in the United States since the Supreme Court and other inferior courts as Congress may establish. Federal judges are appointed for life by the President and must be confirmed by the Senate. All federal courts operate under the Constitution as courts of limited jurisdiction. They may hear only "cases or controversies," meaning that they may not perform non-judicial functions or issue advisory opinions to the President or Congress on the constitutionality of proposed actions. Their jurisdiction is limited to the types of cases specified in Article III, which were chosen to protect various interests of the United States. In addition, Congress has the power to allocate and limit the jurisdiction of these federal courts.

Federal courts have a unique power: they can declare that a law enacted by Congress violates the Constitution and is therefore invalid. This power of judicial review was established by the Supreme Court in the landmark case of *Marbury v. Madison* in 1803⁸.

Now exploring another developed legal system, I will address the supranational nature of the European Union, the dynamics and norms are significantly different. This characteristic greatly affects the autonomy of member states, as their constitutions and legal frameworks must conform to EU regulations and norms. For example, the European Union sets civil and political rights standards that member states must adhere to. One notable area is the death penalty, which has been abolished throughout the EU, thus influencing national policies.

Another area is the voting rights of prisoners; EU principles and rulings by the European Court of Human Rights have influenced national laws to ensure that prisoners' voting rights are respected. This illustrates how constitutionalism within the European Union operates under a different paradigm. National constitutions and legal systems are in many cases subordinated to EU law, leading to a form of constitutional pluralism in which EU law and national law coexist and interact.

has upheld the principle of constitutional counter-limits. Similar conflicts between the European Court of Justice (ECJ) and constitutional courts have occurred in Germany and other European countries. This complex dynamic should be considered when discussing the concept of a European "constitution." The structure of supranational integration in a model that is not strictly federal is inherently ambiguous.

⁸Is a landmark Supreme Court case that established the principle of judicial review, enabling the Court to declare a law unconstitutional. The case arose when William Marbury petitioned the Supreme Court to compel Secretary of State James Madison to deliver his commission as a justice of the peace. Chief Justice John Marshall ruled that while Marbury was entitled to his commission, the Court could not grant it because the section of the Judiciary Act of 1789 that gave the Court the power to issue such orders was unconstitutional. This decision marked the first time the Supreme Court asserted its authority to review and nullify congressional acts, solidifying the judiciary's role as on the check and balance system. (*Marbury v. Madison* 1803)

This interaction can sometimes lead to pulls, but it also fosters a unique legal and political integration that characterizes it. In sum, the supranational nature of the European Union requires member states to conform to a higher level of legal and normative standards, which in turn diminishes the primacy of national law compared to the Union.

In 2005, in the case of (*Hirst v. United Kingdom*), the Court established that depriving all prisoners of the right to vote would create a state of "civic death" unacceptable in a modern society committed to the principles of democracy and equality. The European Court emphasized that although convicted persons are deprived of their liberty, this does not mean that they cannot enjoy other fundamental rights recognized by the Convention, as long as these rights are compatible with their particular circumstances, this is a clear example of how internal debates are made and tensions between national legislation and supranational norms.

This brief comparison illustrates how constitutionalism is approached in different contexts and underscores that there is no unique formula. The effectiveness and implementation of constitutional principles depend heavily on the specific historical, cultural, and political contexts in which they are applied. Understanding these distinctions is crucial to explaining the underlying values and behaviors associated with constitutionalism in each legal system.

Moreover, this comparison underscores the potential for Latin American legal systems to learn from the experiences of more established systems, such as those in Europe and North American. By studying these models, Latin American countries can develop and strengthen their frameworks for upholding the rule of law and ensuring the protection of human rights. This process of learning and adaptation can contribute to the creation of robust legal systems capable of addressing local challenges while adhering to universal human rights standards and more specifically in the context of Colombia and El Salvador.

The Colombian Constitution: A Hermeneutic Analysis

The adoption of the 1991 Constitution was a decisive moment in Colombia's history, marked by a collective struggle involving students, politicians, and civil society. This constitution stands as an inspiration for progressiveness in Latin America, guaranteeing a wide range of human rights. This commitment to human rights is explored more in-depth in this legal provision that will be explored⁹.

As the fundamental law of the country, the Constitution establishes the rights and duties of citizens and defines the organizational structure of the State. was promulgated on the fourth of July of 1991 by a National Constituent Assembly composed of 70 members elected by popular vote during the presidency of César Gaviria Trujillo. Consisting of a preamble, 13 titles, 380 articles, and 67 transitional articles, the Constitution regulates the rights and freedoms of citizens.

These articles cover various aspects such as fundamental principles, rights, guarantees, and duties; the population and the territory; democratic participation and political parties. It also defines the organization of the State, including its legislative, executive, and judicial branches,

⁹ Primarily, the provisions focus on human rights and the rights of detainees in Colombia which are consider fundamental rights.

as well as elections, electoral organization, control bodies, territorial organization, and the economic system and public finances. It also contains provisions for its reform.

International law, and international human rights law in particular, played an important and explicit role in the adoption of the 1991 constitution as the “constituyente” sought to secure a newly democratic and peaceful order in Colombia. While it would be impossible to identify any one international legal norm involved in the process that led to the peace settlement and the consensus around the new constitution, the international human rights instruments provided the basic standards considered by all parties at the time of debating the future bill of rights, as well as some aspects of the organization of state organs and their powers. The constitutional assembly looked also to foreign legal systems and procedures in deliberating on reforms to the Colombian constitution. For example, the common law injunction and habeas corpus actions were considered in the First Commission in plenary sessions and deliberation on the protection and application of human rights (Fox, 2007 pg. 444)

Is also worth emphasizing the indispensable role of the judiciary under the 1991 Constitution. With the creation of the Constitutional Court, the judiciary has been endowed with significant powers, allowing it to serve as a crucial component in the system of checks and balances. This additional instrument not only strengthens the protection of human rights but also ensures their steadfast preservation in Colombian society this is why one of the most respected scholars, lawyer, and judge Rodrigo Uprimny claimed when the 1991 is studied.

More importantly, in normative terms, the Colombian case could teach some lessons about the possibilities, risks, and limits of judicial review as an instrument to avoid the abuse of emergency powers in a democracy. First, it shows that some kind of judicial review is possible and can have a real impact on the control of the government. It also shows that several particular and difficult conditions must be resolved to make possible this kind of control. And finally, the Colombian case makes evident that judicial intervention in this field has high costs. (Uprimny, 2003).

The 1991 Colombian Constitution plays a vital role in shaping the country's approach to criminal justice and detainee treatment. Three specific articles within this document hold the key to understand these approaches. These articles meticulously outline the fundamental rights granted to individuals accused of crimes and those in detention.

First, I will address the teleological framework, exploring the intentions behind these rights. What did the framers of the Constitution hope to achieve by establishing them? Then the analysis will shed light on the core values and principles they are required to uphold. Finally, I will examine how these rights were formally codified within the constitution and how they translate into concrete actions within the criminal justice system and the treatment of detainees. In other words, I will explore the practical implications. By analyzing these aspects, I can see how the articles transition from legal principles to real world impact.

Colombian Constitution.

- **ART 29** “Due process shall apply to all kinds of judicial and administrative proceedings. No one may be tried except in accordance with laws existing prior to the act with which he is charged, before a competent judge or court, and with observance

of the fullness of the forms proper to each trial. In criminal matters, the permissive or favorable law, even when subsequent, shall be applied in preference to the restrictive or unfavorable law. All persons are presumed innocent until they have been judicially declared guilty. Whoever is accused has the right to a defense and to the assistance of a lawyer chosen by him or ex officio, during the investigation and trial; to due public process without unjustified delays; to present evidence and to refute the evidence adduced against him; to challenge the conviction, and not to be tried twice for the same act. Evidence obtained in violation of due process is null and void”.

- **ART 30** “Whoever is deprived of his liberty, and believes he is illegally deprived of it, has the right to invoke before any judicial authority, at any time, by himself or through an interposed person, Habeas Corpus, which must be resolved within thirty-six hours”.¹⁰
- **ART 31** “Any judicial sentence may be appealed or consulted, except for the exceptions established by law”

An analysis of the Colombian Constitution reveals several elements worthy of study. First and foremost is the constitutional guarantee of a proper and fair trial, which ensures that individuals are guaranteed their fundamental rights in the judicial process. This includes the principles of due process, the presumption of innocence, and protection against arbitrary detention or unfair treatment, innocence, and the protection of individual rights within the Colombian legal framework. It firmly establishes the application of due process in all judicial and administrative proceedings, emphasizing the importance of compliance with existing laws and procedural fairness.

It also reinforces the fundamental right to challenge unlawful deprivation of liberty through the mechanism of habeas corpus, enabling individuals to seek timely judicial intervention to remedy any unlawful detention. This provision underscores the commitment to safeguarding personal liberty and ensuring prompt judicial review of such matters. Finally, this right upholds the principle of access to appeal or review of judicial decisions, except in cases expressly exempted by law. This provision reflects a commitment to transparency, accountability, and the right to seek compensation against unjust or erroneous decisions.

Taken together, these articles show how Colombia tries to ensure and defend basic human rights, safeguarding individual freedoms, and ensuring a fair and impartial legal system for all citizens, but they also serve as the foundational pillars upon which the Colombian legal core stands. By reinforcing the principles of justice, equality, and respect for human rights, they provide a solid foundation for the nation's legal system to operate upon. This constitutional provision reflects something that modern constitutions in Latin America often struggle with because of their context, which has been heavily influenced by internal conflicts and armed struggles. It is imperative to emphasize that while the norm is useful, the most important aspect is how it is applied. It doesn't matter if there are a lot of laws if none of them are properly applied or interpreted.

¹⁰ The writ of Habeas Corpus, meaning literally “you have the body,” was used to ensure that a detained person would always be brought before a judge to determine the legality of the detention (1 ERIC M. FREEDMAN, HABEAS CORPUS: RETHINKING THE GREAT WRIT OF LIBERTY New York University Press 2001).

Colombia's constitutional system serves as an example of both the potential and the limits of the legal regulation of equality. From the perspective of equality law, the 1991 Constitution and its legal heritage of rights and access to justice must be considered as a model for development in other fields. In particular, the ready access to the tutela action has empowered many citizens with the capacity to protect their fundamental rights. So too, however, does the state of discrimination in Colombia stand as a testament to the limits of law. Within the complex and tumultuous political environment that exists in Colombia, it is clear that the promise of equality must be delivered by the government as much as by the courts. (Delaney, 2008 pg.59).

Salvadoran Constitution hermeneutic analysis

The Constitution of El Salvador was promulgated during difficult times, in the middle of a civil war that raised doubts about its legitimacy, given that a significant portion of Salvadorans did not participate in the electoral process to form the Constituent Assembly. The inaugural session of the Assembly convened on April 26, 1982, and after much deliberation, the Constitution was finally ratified on December 15 of the following year. This indicates that the approval process was not rushed, but rather extensively debated among deputies representing different political parties.

The Assembly was composed of representatives from different ideological spectrums: three from the right, namely ARENA, PCN, and PPS; one from the center, AD; and one from the then center-left, Christian Democracy. Left-wing deputies were conspicuously absent, as parties associated with this political orientation opted out of the electoral process. Many citizens associated with leftist ideologies joined insurgent groups such as the FMLN, while others were forced to flee the country due to threats and attacks by paramilitary groups targeting those with progressive political beliefs. As a result, a significant portion of the electorate was unable to exercise their political rights during this period.

Military constitutions have been drafted by different procedures, among which predominate executive commissions and constituent congresses or assemblies. Constitutions designed by executive commissions may be imposed or subject to ratification in a referendum. Drafting the constitution by a constituent congress or assembly dominated by military rulers is the most common procedure. These bodies are made up of delegates directly appointed by military rulers or elected under their supervision. Examples are the 1967 constitutions of Honduras, Guatemala, and El Salvador during military governments. In most cases, constituent congresses and assemblies were not only responsible for adopting a new constitution but also for inaugurating a new period of government through the indirect election of the president. One can observe, however, two basic types. The first corresponds to constitutions created during a military regime and in force only for the time the regime is in place; the second, to constitutions created or amended during the military regime that are in force during a subsequent democratic period for the whole or a substantial portion of their lives. (Negretto, 2014 pg.85)

Taking into account the information provided earlier, I can observe that the Constitution of El Salvador has a distinct background. The task now is to compare how civil and political rights are addressed and determine if the Salvadoran constitution contains similar provisions established for the protection of fundamental rights.

- **Article 10** *“The law shall not authorize any act or contract that implies the loss or irreparable sacrifice of the liberty or dignity of the person. Nor shall it authorize agreements in which a person covenants his own proscription or exile”.*
- **Article 11** *“No person shall be deprived of the right to life, liberty, property, and possession, nor any other of his rights without previously being heard and defeated in a trial according to the laws; nor shall he be tried twice for the same cause. Persons have the right to habeas corpus when any individual or authority illegally or arbitrarily restricts their liberty. Habeas corpus shall also proceed when any authority attacks the dignity or physical, mental, or moral integrity of detained persons”.*
- **Article 13** *“No governmental organ, authority, or functionary shall issue orders for detention or imprisonment if it is not in conformity with the law, and these orders shall be always written. If an offender is caught in flagrante [delicto], he may be detained by any person to be immediately delivered to the competent authority”.*¹¹
- **Article 27** *“The State shall organize the penitentiary centers with the objective of reforming offenders, educating them, and teaching them work habits, seeing to their re-adaptation into society and the prevention of crime. The Constitution outlines both the rights and obligations of persons deprived of their liberty, including aspects that are not explicitly stated but are nonetheless critical. These include the right to reside in facilities maintained to the highest sanitary and medical standards, access to nutritious and healthy food, the preservation of identity and dignity, the preservation of ethnic origin, the right to communicate, and the maintenance of family ties through dignified visits”.*

The Salvadoran Constitution has several articles related to the protection of human rights, and is possible to see the intentions of the Congress and the deputies in drafting it. They were working under a military presidency and in the middle of a state of siege, but they also sought to maintain and defend democratic values. This intention is evident in Articles 11 and 12, which show a remarkably protective attitude. This is particularly noteworthy given the difficult context in which these articles were drafted. Furthermore, it appears that despite differences in approach, the spirit of the drafters was clearly committed to a human rights approach.

At a constitutional level, both cases appear similar at first look. However, a closer view reveals subtle differences. In El Salvador, for instance, there are deviations from the strict application of the rule of law. These exceptions provide valuable insights into the contemporary circumstances that necessitate that are as seen before extraordinary measures by Bukele’s behavior focusing more on effective imprisonment than respecting fair trials or even habeas corpus.

“The Bukele administration is responding to El Salvador’s high levels of gang activity, crime, and violence. The president is tapping into the fear of the populace and perceptions of crime to implement militarized internal policing strategies. President Bukele’s populist agenda has also

¹¹Translation from https://www.constituteproject.org/constitution/El_Salvador_2014

given the police permission to use lethal force against gang members, maintaining that extreme measures are necessary to reduce the country's high levels of crime and violence. This gives the police and military more opportunities to partake in human rights abuses with impunity given the lack of accountability and the growing concentration of power in the hands of the executive". (Rosen,2023 Pg.194)

Literature in this area such as Hume,2007, Wolf, S. 2017, and Holland, 2013 suggests that Salvadoran courts often fail to serve as effective guardians of liberty in times of crisis. One strand of research argues that courts struggle to protect liberty when the public demands immediate security measures. During emergencies, the executive branch gains significant autonomy, leading judges and legislators to delegate broad powers to it for strategic reasons. The literature on emergencies suggests that courts typically assess the legality of crisis policies only after the crisis has subsided. As a result, judges often remain passive and deferential to executive decisions (Castillejos, 2024). It is possible to identify some elements, since the declaration of a state of exception in 2022, some of these guarantees have been revoked, particularly targeting gang members, or maras, to combat their activities This is evidenced by the creation of the CECOT (Center for the Confinement of Terrorism), the largest and most advanced detention center in Latin America.¹²

While authorities in El Salvador claim to have detained more than 60,000 people during the state of emergency, reports of widespread abuses have surfaced. These groups have documented numerous cases of arbitrary detention based on appearance or background, cases of torture, disappearances, and violations of due process. Furthermore, with more than 54,000 people in pre-trial detention following the emergency, prisons have become severely overcrowded, reaching three times their designed capacity. This has exacerbated the already dire conditions in these facilities, including limited access to basic necessities.

The system not only focusing on Governmental duties, but prisoners also have certain responsibilities, including respect for the internal rules of the regime and compliance with disciplinary measures. They must refrain from violating the rights of fellow inmates and prison officials. In addition, they are expected to actively contribute to maintaining the sanitary conditions of the institution, to take care of the facilities and property assigned to them, and to participate constructively in the treatment system. human rights groups have raised concerns about the treatment of detainees¹³.

In May 2021, Bukele's two-thirds majority in the Assembly summarily removed and replaced all five judges on the Supreme Court's Constitutional Chamber and the attorney general. In

¹²maximum security jail built a year ago by the Salvadoran government to imprison "high-ranking" members of the country's main gangs. A gargantuan complex constructed in the middle of nowhere, it symbolizes President Nayib Bukele's controversial security policy more than any other project. Critics of the president have called it a "black hole of human rights", where international guidelines on prisoner rights are flouted.

¹³ In order to provide guidance to prison management and staff on how to act or respond appropriately in such circumstances, the Nelson Mandela Rules include specific provisions and restrictions related to, inter alia the imposition of disciplinary sanctions, including solitary confinement, cell and body searches as well as the use of force and use of instruments of restraint. Importantly, the rules also establish clear overall criteria applicable to restrictions, discipline and sanctions, such as the principles of fairness, proportionality, legality and necessity. (United Nations Office on Drugs and Crime)

June 2021, the Assembly appointed five new judges to the Supreme Court for a total of 10 out of 15 Supreme Court judges, although under the law each newly elected legislature is allowed to appoint only five judges to the court. In September 2021, lawmakers passed laws allowing the Supreme Court and the attorney general to dismiss judges and prosecutors over 60 years of age and expanding their power to transfer judges and prosecutors to new posts. The laws have been used to abusively dismiss or transfer independent judges or prosecutors (H.R report on Salvador, 2022)

This was denounced by one of the most respected international NGO, Human Rights Watch, which has a division dedicated to Latin America. They conducted independent research to gather information and fact-check the government's claims of success against the gangs. Such actions could potentially lead to massive human rights violations. I can see that although some constitutional norms protect people from arbitrary decisions, the institutions themselves are fragile. This fragility can potentially lead to the non-application of these principles and democratic values this not only applies to Salvador or Colombia but all in Latin America.

El Salvador's notable reduction in homicides raises a complex dilemma: Is mass incarceration a justifiable price to pay for security? The recent surge in arrests, totaling more than 60,000 people, has undeniably coincided with a significant drop in homicides, which had been among the highest in Latin America. However, among these apparent gains in public safety, human rights groups have shed light on widespread abuses in detention.

Salvadorans have low levels of trust in institutions, except for the military. In a context of limited confidence in the country's criminal justice system, the Supreme Court, and law enforcement institutions, cognitive and emotional factors such as fear of crime appear to be pervasive in the population's policy preferences. The relevance of different predictors of support for *mano dura* such as limited recreational activity because of fear of crime illustrates citizens' concerns and anxieties about gangs, crime, and violence. (Rosen, 2023).

This trade-off between increased security and potential human rights violations requires careful consideration. While the reduction of violent crime is undoubtedly laudable, the methods used to achieve such results must not compromise fundamental human rights. Therefore, policymakers and stakeholders must navigate this delicate balance and ensure that efforts to maintain public safety are consistent with upholding the rights and dignity of all individuals within Salvadoran society. This can be explained by the fact that they have always lived under the siege of violence and gangs. So, Salvadorians may prefer an iron fist society rather than continue to live in a country where you can be killed at any time without repercussions "However brutal they appear, Bukele's methods unequivocally dealt a blow to the criminal organizations that had wrought havoc in the country for decades, dismantling many of their operations and subsequently contributing to reducing the levels of violence to historical lows" (Breda, 2023).

Moreover, this phenomenon cannot be understood only from a legal or political perspective; it is imperative to consider the landscape and nature of both conflicts. In Colombia, vast areas of jungle provide a haven for gangs and criminal activity. Contrary to this, Salvadoran gangs operate primarily in urban areas. This distinction radically affects how these issues are addressed. As scholar Tiziano Breda argues, the contextual differences underscore the need for nuanced approaches to these challenges. Breda's analysis sheds light on the multifaceted nature

of conflict resolution and underscores the importance of tailored strategies that take into account the unique characteristics of each setting.

“First of all, the apparent success of Bukele’s dragnet is deeply intertwined with the clearly defined criminal landscape in El Salvador. Unlike most Latin American countries, criminal activities in El Salvador are concentrated in densely inhabited urban and suburban settings, where only the criminal gangs – the Mara Salvatrucha and the two factions of the Barrio 18 – exerted a virtual hegemony. The spatial distribution of their “areas of influence”, moreover, had been informally agreed upon in a negotiation called the Truce (2012–2014), making it easier for authorities to trace back violent crimes to either group” (Breda, 2023)

Politicians across the hemisphere have seized on Bukele's achievements to advance their own interests. In countries such as Colombia, Chile, and Argentina, opposition leaders have used Bukele's actions as a benchmark to highlight what they perceive as their own governments' shortcomings in addressing security concerns. This contrast is particularly significant given the stark divergence between Bukele's approach and the total peace decree in Colombia. It underscores the conflict between these different strategies, one emphasizing immediate numerical results, the other potentially influencing civil society behavior. Bukele's status as one of the most highly regarded and popular presidents in the Americas is evident, as evidenced by the significant voter turnout that supported his re-election bid.¹⁴

“Since ideological differences are blurred in a context of high-security concerns and dissatisfaction with political institutions, the landscape in El Salvador suggests that the prospects for policy change are limited. The population is willing to support candidates who are the “toughest” on crime and vow to change the system and reduce crime and violence regardless of their political affiliation and institutional implications for democracy”. (Rosen, 2023 pg.178)

A comparison with the basic juridical perspective reveals striking similarities. Both texts prioritize and guarantee the protection and respect of human rights. However, it is crucial to delve deeper into the specifics. Therefore, this study cannot focus on just one aspect but requires a more holistic approach. First, it is clear that both countries operate as democracies, maintaining the tripartite division of power. However, the executive branch is significantly more influential than its counterparts, a characteristic that strengthens their political system in contrast to the legislative and judicial branches.

In Colombia, the Constitutional Court has set a landmark precedent by effectively restraining the power of the president. This has been observed not only with the current president but also with numerous predecessors since the establishment of this judicial body under the 1991

¹⁴ President Nayib Bukele and his New Ideas party secured a decisive victory in the recent elections, achieving the supermajority needed in Congress for unrestricted governance, as announced by electoral officials on Monday. The announcement follows an extensive and contentious vote counting process, drawing scrutiny from electoral watchdogs and eliciting concerns from the country's feeble opposition, who have pointed out irregularities. Bukele's re-election on February 4 with an overwhelming 84.7% of the vote was never in doubt. However, the question lingered whether his New Ideas party would mirror this success in the legislative elections. The answer came on Monday, with officials revealing that New Ideas had clinched 54 out of the 60 congressional seats, with allied parties securing an additional three seats. <https://apnews.com/article/el-salvador-nayib-bukele-election-8637667ca3b9f35c9ffd2baf805a9ade>

Constitution¹⁵. In El Salvador, the situation has evolved differently, as the independence of the Constitutional Chamber is not as clear. There have been claims about the chamber's exposure to political interference since now is composed exclusively of partisan judges.

They facilitated Bukele's path to re-election by ruling that a second consecutive presidential term was de facto possible, despite the clear meaning of Article 152. Their reasoning went beyond the argument that term limits were an excessive restriction. They argued that if the people want to elect a particular president, they should be free to do so. Thus, to deny them that opportunity would be contrary to the will of the people (Graute,2023), this will of the people term has been used numerous times when some presidents want to modify the constitution or its organs.

Moreover, it is important to examine and compare additional information or data to avoid bias in favor of one country over another. For example, consult sources such as Freedom House, which uses a sophisticated methodology to measure a country's level of freedom. This methodology includes various factors such as the enforcement of judicial decisions and the extent to which human rights are respected.

Colombia's classification as "free," with a score of 70 out of 100 on the Freedom in the World website, is significant because it reflects an overall assessment of the country's freedom. This composite score is divided into two distinct categories: Political Rights and Civil Liberties, each of which is assigned a numerical value to determine the degree of freedom in these areas. Specifically, Colombia received a score of 31 out of 40 for political rights and 39 out of 60 for civil liberties.

The stability of these scores from one year to the next suggests a consistent assessment of Colombia's freedom status. This stability can be interpreted as an indication of the country's relative consistency in upholding political rights and civil liberties over time. In terms of methodology, Freedom House uses a rigorous approach to calculate freedom scores. It uses a weighted scale that takes into account a variety of factors and indicators to provide a comprehensive assessment of each country's level of freedom. Freedom House utilizes a specific methodology for computing freedom scores, which involves a weighted scale.

On the other hand, if we turn to the case of El Salvador, I find a similar assessment. The table shows El Salvador's scores in the same categories on the country's freedom status. Notably, El Salvador is categorized as "Partly Free," with an overall score of 53 out of 100. This score is further broken down into two critical components: Political Rights and Civil Liberties, each of which is assigned a numerical value for precise evaluation. Specifically, El Salvador scored 21 out of 40 for political rights and 32 out of 60 for civil liberties.

The table 6 also reveals a worrying trend, as El Salvador's overall score has declined from 56 last year. This decline underscores potential challenges or setbacks in upholding political rights and civil liberties in the country. It calls for a closer examination of the factors contributing to this decline and warrants concerted efforts to address any erosion of freedoms. Comparing these findings with those of Colombia, I observe nuanced differences in the level of freedom experienced by each nation. While both countries face their own unique circumstances, these

¹⁵ The Constitutional Court was created under the model of Kelsenian Constitutional Courts, with monopolistic powers over abstract constitutional review—which means that in Colombia, unlike the U.S. “diffuse” model, the Constitutional Court exerts “concentrated” constitutional review (Lamprea,2010)

comparative assessments offer valuable insights into the state of freedom and democracy in their respective contexts.¹⁶

Status	Political Rights score							
	0-5*	6-11	12-17	18-23	24-29	30-35	36-40	
Civil Liberties score	53-60	PF	PF	PF	F	F	F	F
	44-52	PF	PF	PF	PF	F	F	F
	35-43	PF	PF	PF	PF	PF	F	F
	26-34	NF	PF	PF	PF	PF	PF	F
	17-25	NF	NF	PF	PF	PF	PF	PF
	8-16	NF	NF	NF	PF	PF	PF	PF
	0-7	NF	NF	NF	NF	PF	PF	PF

F: free PF: partly free NF: not free (Freedom House)

It is relevant to note that this is not the only way to measure this, as we sometimes focus exclusively on legal guarantees of rights without considering their fulfillment on the ground. Both laws and actual practices are essential factors to consider in this study.

Comparing these elements can provide more insight into the current political situation in both countries. However, this alone is not sufficient to conclude, as it is only one metric for identifying freedom factors. It is essential to compare it with the other information presented earlier in Tables 3 and 4. This approach includes government data and information from non-profit organizations, which helps to avoid bias in the research.

Now, this text will compare the criminal codes, which serve as specialized tools for the application of the legal principles established in the Constitution as fundamental guarantees of human rights. This comparison can provide insight into how Congress and legislators have interpreted these norms. In addition, it can provide other elements of comparison that facilitate a top-down approach to information. Through this approach, I aim to identify the causes that contribute to the differences or similarities in the criminal systems of these countries.

First, it is important to define the comparison accurately, primarily because this definition can be related to what has been explained before reading the policies developed or implemented in these countries. This is why it is vital to explain the most well-known theories regarding criminal theory and how they are incorporated into the legal framework of these countries,

¹⁶ Freedom in the World is an annual global report on political rights and civil liberties, composed of numerical ratings and descriptive texts for each country and a select group of territories. The 2024 edition covers developments in 195 countries and 15 territories from January 1, 2023 through December 31, 2023. The report's methodology is derived in large measure from the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948. Freedom in the World operates from the assumption that freedom for all people is best achieved in liberal democratic societies. Freedom in the World assesses the real-world rights and freedoms enjoyed by individuals, rather than governments or government performance per se. Political rights and civil liberties can be affected by both state and nonstate actors, including insurgents and other armed groups.

https://freedomhouse.org/sites/default/files/2024-02/FIW_2024%20MethodologyPDF.pdf

describing the criminal system as a whole. Then, further development can focus on the evolution of these theories based on the main principles proposed by the criminological author.

The penitentiary system, in the broadest sense, encompasses the entire legal and institutional bases responsible for the supervision of persons deprived of their liberty concerning their sentences. It is therefore imperative to study the theory of punishment. When a crime is committed, the punitive power of the State is activated, resulting in what is commonly known as punishment. Punishment manifests itself in two main forms: real or burdensome and personal, the latter being the focus of this research.

Personal punishment, as its name implies, involves restrictions on an individual's freedom and certain rights, such as the right to manage one's property, as imposed by prohibition. Throughout history, scholars and researchers who have studied punishment have considered its purpose. (Mero, 2023 pg. 18) As a result, various theories have been developed in order to clarify the foundations and objectives of this legal institution, which are summarized in the concept of "ius puniendi", or the right to punish.

The retributive theory proposes that the purpose of punishment is rooted in the cause-effect relationship of imputable conduct. Essentially, it argues that those who commit crimes deserve punishment because their actions constitute wrongdoing that warrants reproach through punitive measures. What colloquially is known as an eye for an eye. However, this theory faces challenges in its sustainability. If criminal law aims to restrain the punitive authority of the State and, secondarily, to safeguard legal interests, then employing a penalty that ignores broader societal objectives undermines its legitimacy. (Cepeda, 2020, pg. 36)

The Relative Theory of Punishment is named for its central premise: that the purpose of punishment depends on its recipient. This theory elucidates two distinct perspectives: one from the societal standpoint and the other from the point of view of the individual subject to a particular punishment. Within this proposal, Relative Theory is divided into two categories: general prevention and special prevention.

General prevention focuses on the broader societal effects of punishment. It suggests that punishing individuals who commit crimes serves as both an educational tool and a deterrent for the community at large. (De Barreto, 2013, pg. 31) By observing the consequences of criminal acts, citizens are deterred from engaging in similar behavior, thus promoting compliance with the law. Inocencia De Barreto highlights the importance of general prevention, emphasizing its role in promoting law-respecting behavior and preventing norm violations.

In contrast, special prevention, which was developed by German jurist Franz von Liszt, focuses on the individual offender. It argues that punishment directly affects the offender, deterring him or her from future transgressions through the coercive power of the state. (De Barreto, 2013, p. 32) Specifically, prevention aims to create a deterrent effect on the offender, reducing his or her propensity to commit additional crimes.

Finally, the Mixed theory reconciles the notion that punishment is merely an evil countered by another evil. While this perspective acknowledges the retributive nature of punishment, it also emphasizes the importance of incorporating utilitarian elements, such as general and specific prevention, into the purpose of punishment. This integrated approach, known as the unitary theory of punishment, recognizes that punishment should serve not only to retribute but also to

prevent future crimes. Furthermore, proponents of this theory argue that the severity of the crime should dictate the severity of the penalty imposed. (De Barreto, 2013, p. 36).

Continuing with the previously adopted structure, and after clearly defining this juridical concept, I now turn our attention to the Colombian Penal Code. This code is the tool the state uses to establish crimes and their consequences. It is important because it reflects the theories explained earlier. This code was approved as a law by Congress, and although the year of its approval is noteworthy, it's to recognize the numerous reforms that have been carried out over the years. The main objective is to examine certain normative elements that can be compared between the two codes. It's worth noting that legal concepts and perspectives can vary significantly from country to country, especially within specialized subjects. However, it is precisely this diversity that makes comparisons at this level valuable.

“LEY 599 DE 2000” Colombian Criminal Code

- **Article 34.** *On penalties. The penalties that may be imposed pursuant to this code are principal, substitutive, and accessory penalties depriving of other rights when they do not act as principal. as principal. In the events of culpable crimes or crimes with non-custodial penalties, when the consequences of the conduct have reached exclusively the perpetrator or his ascendants, descendants, spouse or ascendants, descendants, spouse, permanent partner, sibling, adoptive or adoptive parent, or relative up to the second degree of affinity, the imposition of the criminal sanction may be dispensed with when it is not necessary.*
- **Article 35.** *Principal penalties. The principal penalties are the deprivation of liberty of imprisonment, the pecuniary penalty of a fine, and the pecuniary penalty of a fine. of imprisonment, the pecuniary penalty of a fine, and the other penalties depriving of other rights that are established in the special part.*
- **Article 36.** *Substitute penalties. Home imprisonment is a substitute for imprisonment and house arrest. a prison sentence and weekend arrest convertible into uninterrupted arrest is a substitute for the fine. substitute for a fine.*
- **Article 37.** *Imprisonment. Imprisonment shall be subject to the following rules: 1. The term of imprisonment shall have a maximum duration of forty (40) years. 2. Its fulfillment, as well as the penitentiary benefits that entail the reduction of the sentence, shall comply with the following rules: 1. 2. Its fulfillment, as well as the penitentiary benefits that entail the reduction of the sentence, shall be in accordance with the provisions of the laws and the present Code.*

The Colombian Penal Code focuses primarily on defining the conduct that can lead to being in prison and the conditions and rules for such imprisonment. This emphasis ensures that decisions regarding these notions are not arbitrary. There are two main purposes behind this approach: first, to comply with the criteria that imprisonment should be the "ultima ratio," meaning the last resort in Latin; and second, to address situations in which individuals accused and charged with crimes are unable to reintegrate into society.

In the context of social rehabilitation, it's essential to consider the insights of jurist Jorge Haddad, who emphasizes the multifaceted nature of rehabilitation. Haddad suggests that rehabilitation entails a process that combines elements such as retention, custody, and therapy. The overarching goal of this process is to minimize the duration of an inmate's stay in a penitentiary unit and to ensure that this time is spent with minimal negative consequences, both for the individual and for others (Haddad, 2017). Moreover, this process consolidates the principles and norms enunciated in the Constitution, aligning them with the provisions of these articles. It is now possible to observe how, based on Kelsen's principle of norm hierarchy, lower-level norms are applied to provide a clearer scope to the human rights protected in the Colombian Constitution.

This approach ensures that constitutional principles are not only acknowledged but also put into practice and implemented through detailed regulations and guidelines. By adhering to Kelsen's hierarchy, the legal framework guarantees that subordinate norms do not conflict with higher constitutional mandates. This method enhances the protection and clarity of human rights, ensuring they are effectively upheld and operationalized within the legal system. Thus, the principles of the Colombian Constitution are not merely theoretical but are actively enforced, providing a robust foundation for the protection and promotion of human rights throughout the country.

Now, as a consequence of studying the Colombian code, it is time to address the Salvadorian code in order to compare and contrast these jurisdictions. This comparative analysis will allow us to identify similarities and differences in their own jurisdictions.

DECREE number 1030 of 1997

- *Article 44.- The penalties referred to in this Code are classified as follows: 1) Principal penalties; and, 2) Accessory penalties.*
- *Article 45.- The following are principal penalties: (1) Imprisonment, the duration of which shall be from six months to seventy-five years. In the cases provided by law, the sentence shall be served in a cell or special isolation pavilion. special isolation cell or ward, and no less than ten percent of the sentence shall be served from the beginning. the sentence.*
- *Article 46.- The following are accessory penalties: (1) The penalty of absolute disqualification, The penalty of therapy shall be established as an accessory penalty in crimes related to sexual freedom, subject to an expert examination. sexual freedom, subject to expert examination.*
- *Article 77.- In cases of imprisonment not exceeding three years and in the absence of the above-mentioned alternatives, the judge or court may grant a conditional suspension of the execution of the sentence, suspending its enforcement for a trial period of two to five years, taking into account the personal circumstances of the convicted person, the circumstances of the act and the duration of the sentence. This decision shall be based on: 1) In the unnecessary or inconvenient of the prison sentence and of any of those that replace it; and, 2) That the beneficiary has canceled the civil*

obligations arising from the deed determined in the sentence, satisfactorily guarantees its compliance or demonstrates his absolute impossibility to pay.

- **Article 80.-** *The judge or court may not impose conditions whose compliance would be worse to the convicted person or likely to offend his dignity or esteem. The rules of conduct shall not affect the privacy of the convicted person, nor shall they be contrary to his or her religious or political beliefs or standards of conduct not directly related to the act committed.*

As noted above, the purpose of criminal codes is to give concrete form to the principles and guidelines established in the Constitution. In the Salvadoran Constitution, there is a more in-depth focus on the role of judges. This focus includes not only their responsibilities when sentencing a criminal but also their duty to exercise their powers within legal limits to prevent injustices.

Regarding the rights of persons deprived of their liberty, the Salvadoran Constitution stipulates specific provisions for the organization of the penitentiary system. It mandates that the State shall organize penitentiary centers with the primary objectives of correcting delinquents, providing education, and fostering work habits. The overarching goals of these measures are to facilitate the rehabilitation and reintegration of inmates into society and to prevent the recurrence of criminal behavior (ART 27 Salvadorian Constitution).

This constitutional directive emphasizes the dual purpose of the penitentiary system: to serve both as a corrective mechanism and as a preventive tool against future crimes. By focusing on education and work habit formation, the system aims to equip inmates with the necessary skills and discipline to lead productive lives post-incarceration. The emphasis on readaptation highlights the State's commitment to not only punishing but also rehabilitating offenders, ensuring that they have the opportunity to reintegrate successfully into society.

The Salvadoran Constitution emphasizes judicial restraint and accountability to ensure that judges do not exceed their authority. This measure is clearly intended to prevent unjust convictions and to uphold the rule of law. By explicitly delineating the scope of judicial powers, the Constitution aims to safeguard the rights of individuals and maintain a fair and balanced justice system. This detailed approach underscores the importance of judicial integrity and the protection of human rights within the legal framework.

Prison treatment is regulated under Title Six, specifically in Article 342 of the Penal Code, which defines it as follows: "The set of therapeutic assistance activities and intensive training, educational, work, and social interaction programs that facilitate personal development, aimed at achieving the social reintegration of the convicted person, including post-custodial care". (General Regulation of the Penitentiary Law, 1997)

These rehabilitation programs are divided into general and special programs. General programs are designed for all inmates, ensuring the enjoyment of fundamental rights such as food, health, visitation, and work. On the other hand, special programs are provided to specific inmates whose criminal behavior requires differentiated treatment, as diagnosed by the Criminological Council of the Region. For instance, inmates with criminal tendencies of a sexual nature receive

tailored interventions to address their specific needs. This demonstrates how paradoxical legislation can be when contrasted with the reality in some countries. More specifically, in El Salvador, the prison system faces significant challenges, as evidenced by an incarceration rate exceeding 139%. This stark statistic highlights a clear disconnection between the established norms and the actual conditions within the penal system.

Despite the legal framework's emphasis on rehabilitation and tailored interventions, the overcrowded and under-resourced prison system struggles to meet these ideals. The high incarceration rate not only strains the capacity of penitentiary centers but also undermines the effectiveness of rehabilitation programs. Overcrowded facilities can lead to inadequate access to therapeutic support, educational opportunities, and work programs, which are essential for the inmate's development and social reintegration.

Moreover, the disparity between legislative intentions and practical realities points to broader systemic issues, such as insufficient funding, lack of trained personnel, and inadequate infrastructure. These challenges impede the successful implementation of the comprehensive rehabilitation programs envisioned by the law. As a result, the potential for genuine reform and reintegration of inmates is significantly compromised.

This disconnection is quite evident showing that aligning the legislative framework with the on-the-ground realities of the prison system is not an easy task. Addressing overcrowding, improving resource allocation, and enhancing the capacity of rehabilitation programs are crucial steps toward ensuring that the principles enshrined in the law translate into meaningful and effective practices within El Salvador's penitentiary system. With this, I conclude the comparative analysis of the criminal codes and address the last legal texts, which are the decrees of each country that are considered controversial on a national or international level.

Now, the focus shall turn to the decrees promulgated by El Salvador and Colombia. In examining these decrees, I can observe how each country diverged in its perspectives on addressing criminality: one emphasizes a punitive approach, while the other adopts a restorative approach. This comparison helps to illustrate how presidential systems significantly influence local policies and why these policies often tend to be short-term solutions.

Total Peace Decree 2272 of 2022

- *Article 8. The representatives expressly authorized by the National Government, in order to promote reconciliation among Colombians, peaceful coexistence, and achieve peace, following the guidelines of the President of the Republic, may:*
- *Carry out all acts aimed at establishing approaches and conversations with organized armed structures of high-impact crime that demonstrate a willingness to move towards the Rule of Law.*
- *Carry out all acts aimed at establishing and advancing dialogues, as well as negotiations and reaching agreements with the spokesmen or members representing*

the organized armed groups outside the law, aimed at obtaining solutions to the armed conflict, achieving the effective application of International Humanitarian Law, respect for Human Rights, the cessation of hostilities or their reduction, the reintegration into civilian life of the members of these organizations or their transition to legality and the creation of conditions that promote just political, social and economic order.

- *The agreements and their content will be those that the National Government deems necessary to advance the peace process and their compliance will be verified by the national or international bodies that the parties designate for this purpose and by common agreement.*
- **PARAGRAPH 1.** *A member-representative is understood to be the person that the illegal armed group designates as its representative to participate in dialogues, negotiations, or the signing of agreements with the National Government, or its delegates. representative to participate in the dialogues, negotiation, or signing of agreements with the National Government, or its delegates. Likewise, a representative member is understood to be the person that the organized armed structure of high-impact crime designates as its representative to participate in the talks, negotiation, or signing of agreements with the National Government or its delegates. as its representative to participate in the approaches, conversations, or subscription of terms of submission with the National Government or its delegates.*
- *Se A spokesperson is understood to be a person from civil society who, without belonging to the illegal organized armed group, but with the express consent of the latter, participates in the talks, talks, or signing of terms of submission with the National Government or its delegates. Those who act as members of social and humanitarian organizations will be admitted as spokespersons, whom the President of the Republic considers can those who the President of the Republic considers can contribute to the peace process, the social conflict, and who are deprived of their liberty, shall be admitted as spokespersons liberty.*
- **PARAGRAPH 2.** *Once a process of dialogue, negotiation, or signing of agreements has begun, and with the purpose of facilitating the development of the same, the corresponding judicial authorities shall suspend the arrest warrants that have been or will be issued against the representative members of the armed organizations outside the armed conflict. members representing the illegal armed organizations with which dialogues, negotiations, or peace agreements are being carried out; or of the members of the armed peace agreements; or of the members representing organized armed structures of high-impact crime with which approaches talks or peace agreements are being talks are being held or terms of submission to justice are signed, to make the transition to the rule of law.*

The first thing to note is that this decree consists of 18 articles. However, I will focus on Article 8 because it is the one that provides the content and relevance for this research. This entire decree completely changes the traditional criminal approach of Colombian institutions. Moreover, it refers not only to illegal armed groups but also to criminal gangs that possess any kind of weapons.

It is important to note that Gustavo Petro's campaign slogan was centered on creating a peaceful society. He promoted dialogue with all armed groups and gangs, claiming he would be the leader of national unity. This decree extends his policies, reflecting his belief that the "mano dura" approach was ineffective against these groups. Instead, he aims to generate new legal tools to address violence, drug dealing, and criminality from a fresh perspective¹⁷.

This approach is considered new in this field because it challenges the traditional concept of crime. Rather than focusing on punishing individuals and trying to change their behavior through punishment, this approach views crime as a social structural problem. It underscores addressing the root causes of crime within society, such as poverty, lack of opportunity, and social inequality. This approach proposes a radical shift in terminology. By replacing labels such as "criminal" or "illegal" with "gestor de paz" (which roughly translates as "peacekeeper"), the program aims to redefine the perception of these individuals. They are no longer seen as a threat, but rather as potential agents of positive change, building a more peaceful community.

As I mentioned earlier, several factors deviate from the typical criminological approach and cannot be understood within this framework. For example, retribution, rehabilitation, and reparation are not adequately addressed here. I should not misunderstand this as a transitional justice system just because it was created before, during the Santos presidency. Not only is the scope different, but it is treated as a policy to reduce crime rather than a pact or treaty to achieve transitional justice which is not.

Transitional Justice is a response to systematic or widespread violations of human rights. It seeks recognition for the victims and to promote possibilities for peace, reconciliation, and democracy. Transitional Justice is not a special kind of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly, in others they may take place over decades. (ICTJ, 2008)

Transitional justice has often been criticized for its limitations and inherent weaknesses. Key issues include their distance from victims, the disconnect between those who have suffered and the judicial process that addresses their suffering, the high cost of trials, difficulties, and delays in prosecuting all perpetrators, the inability to address the structural context that enables mass violence, their adversarial nature, and their focus on perpetrators rather than victims and the disconnection between this methodology and collateral can only be seen years later since is not a short term strategy.

In this case, Article 8 of the decree empowers representatives appointed by the President to promote peace in a broad sense. These representatives are authorized to engage with organized armed structures involved in serious crimes, provided that these groups demonstrate a genuine will to move towards the rule of law. This means that former criminal gang members play a role in dismantling other organizations in exchange for certain benefits.

¹⁷ On March 2023 Minister of Defense Iván Velázquez presented the incoming government's strategy on "Security, Defense, and Citizen Coexistence: Guarantees for Life and Peace," a document that provides a basis for security and defense planning when designing new applications or expanding the current framework. The strategy places a premium on protecting human lives and respecting international human rights conventions. Compared to previous approaches that focused on military and law enforcement measures to combat armed insurgent groups and drug trafficking organizations, the new strategy takes a more holistic and people centered approach, which prioritizes the well-being and protection of individuals and communities. (Center for Strategic and International Studies 2023)

Furthermore, these representatives may engage in dialogues, negotiations, and agreements with members or spokespersons of armed groups outside the law. This approach challenges traditional criminal justice systems because there is no accountability for what the parties agree to. Despite the goals of resolving the armed conflict, enforcing international humanitarian law, respecting human rights, ceasing or reducing hostilities, reintegrating members into civilian life, and promoting a just political, social, and economic order, the lack of accountability remains a major concern mainly under the theories explained before.

This issue aligns with the prison problems that Colombia is currently facing. The overcrowding in prisons has been addressed by the Constitutional Court, which has declared a situation known as the "Estado de Cosas Inconstitucional." This judicial decision states that there has been a massive, generalized, and widespread violation of the Constitution. Specifically, the Court has identified a structural violation of fundamental rights that is so severe it contravenes the founding principles of the National Constitution. Consequently, the Court has ordered all involved institutions to take comprehensive, timely, and effective actions to resolve this state of constitutional "abnormality" (Sentence T-025 of 2004).

In one of its recent decisions, the Court declared the need for a structural change in the way the criminal justice system is approached. The Court stressed the need to adopt a broader legal, sociological, and economic approach to crime. This approach must include a fundamental respect for human rights, including those of prisoners. The Court emphasized that current practices are inadequate and that a paradigm shift is needed to ensure that the criminal justice system not only punishes but also rehabilitates and respects the inherent dignity of all individuals. This change is essential to uphold the principles of justice and human rights enshrined in the Constitution.

Within a maximum term of one year from the notification of this ruling, all territorial entities, particularly the departments, the capital district, and departmental capitals must establish a plan for funding sources. This plan should include increasing quotas for the population under preventive detention. In accordance with the principles of coordination, concurrence, and subsidiarity, the departments must work with the municipalities under their jurisdiction to define these funding sources. The plan should allocate sufficient resources for improving and adapting existing prison infrastructure, constructing new prisons, and implementing all necessary measures to ensure minimum standards of dignified living conditions for those in preventive detention. (Sentence SU-122 of 2002)

Media sources report that kidnapping statistics in Colombia are at their highest in the last decade (Semana, June 17, 2023; Infobae, June 17, 2023). According to National Police data from January to May 2023, there were 152 kidnappings across 19 of the country's 32 departments. For comparison, there were 57 kidnappings during the same period in 2022. This crisis has extended so much that On Thursday 16 May 2024 in Bogota, the director of "Modelo" prison, was murdered while heading home. He was 57 years old. The news was confirmed by Colombian Minister of Justice, Néstor Osuna, who announced an operation to find those responsible for the murder and assured that security at the National Penitentiary and Prison Institute (Inpec) will be reinforced.¹⁸ This is not only focused on the prisoners but rather on

¹⁸ <https://www.bbc.com/mundo/articles/cl7lvej4n2ko>

this whole system that is why this decree is so controversial since the results haven't been positive in the short term but still too early to give a conclusion on this policy.

Finally, I will analyze President Bukele's decree. This will clearly demonstrate how the two presidents chose to address the issue of criminality in two distinct ways. This divergence is significant as it highlights a difference not previously evident in their constitutions or legal codes.

Decree N° 333 Regime of Exception

- *Art. 1.- The purpose of this decree is to facilitate the legal tools and mechanisms and legal mechanisms to the institutions of Public Security, the National Civil Police, and the Armed Forces of El Salvador, in order to Salvador, to reestablish order and citizen security, and territorial control. To declare a Regime of Exception.*

Competent Authority

- *Art. 3.- The Ministries of Justice and Public Security, the Ministry of National Defense, and the Director of the Police shall be competent National Defense, and the Director of the National Civil Police, to coordinate actions to comply with the provisions of this decree, in accordance with the provisions of this decree.*

Suspension of Constitutional Guarantees

- *Art. 4.- As of the effective date of the present decree and for a period of thirty days, the rights of the constitutional rights and guarantees regulated in articles 7, 12, second paragraph, 13, second paragraph, and 13, second paragraph, are suspended for a period of thirty days. second clause, 13 second clause, and 24, in relation to article 131 ordinal 27, and article 29, all of the Constitution of the Republic. of the Constitution of the Republic.*

The case of El Salvador is radically different from that of Colombia, despite both countries having similar constitutional and legal frameworks. This difference is evident in their approaches to addressing criminal and prison issues. El Salvador has implemented measures that involve suspending certain civil liberties and constitutional guarantees to combat the extreme violence that has plagued the country. This approach contrasts sharply with Colombia's methods, highlighting distinct strategies for understanding and managing criminal justice and prison problems in each nation. El Salvador's decree reflects a more stringent approach, prioritizing immediate security concerns over maintaining certain civil rights, illustrating a significant divergence in policy and philosophy between the two countries.

The concept of public security is a complex issue that evolves with society. International treaties and conventions treat it as a fundamental right that facilitates the exercise of other rights. This concept goes beyond simply protecting individuals from theft or assault; it ensures support in situations of illness or disability, highlighting the state's role in preserving human dignity (Almeida & Minuscoli, 2016). However, this framework can also be misused to justify

a shift towards more authoritarian regimes. The establishment of supra-legal criteria can directly affect fundamental rights, exemplifying the "mano dura" (iron fist) approach.

In the case of El Salvador, the Legislative Assembly approved measures proposed by President Nayib Bukele to combat gang violence, which were formalized in an emergency decree. These measures include imprisoning minors, restricting freedom of expression, and expanding pre-trial detention and anti-terrorism laws. (HRW Salvador, 2022) Among the new laws, one criminalizes any form of expression related to gangs, punishable by up to 15 years in prison, which could potentially target journalists and critics. Another law lowers the age of criminal responsibility to 12, allowing for severe trials for minors.

through the implementation of this decree, President Nayib Bukele established the Centre for the Confinement of Terrorism (CECOT) in Tecoluca, where more than 12,000 suspected members of El Salvador's Maras gangs are confined. The conditions in CECOT are notably severe, with prisoners pleading for food and medicine while terminally ill inmates reportedly die due to lack of care. The facility houses 12,114 inmates, including many from the rival gangs MS-13 and Calle 18. The violent history of these gangs means that their members often exploit any opportunity to harm their adversaries. Each 100-square-metre cell contains approximately 75 inmates, who must sleep on metal bunks and share two toilets and two sinks. The prisoners are deprived of mattresses, and outdoor access, and are allegedly subjected to regular beatings and torture by the guards, as reported by human rights organizations¹⁹.

The implementation of the "mano dura" policy, while producing short-term improvements in public security, is ultimately unsustainable and could lead to the isolation of the country due to its massive human rights violations²⁰. This decree illustrates the extent to which strong presidentialism in Latin America can significantly influence and potentially undermine the rule of law, raising serious concerns. The policy highlights the dangers of excessive executive power and demonstrates the potential for such measures to undermine democratic institutions and fundamental rights, which is deeply troubling for stability and governance in the region.

This decree highlights the significant divergence between constitutional principles and the criminal code laws regarding the current situation in El Salvador's streets and prisons. There is no clear evidence of respect for human rights in this context. While the policy has achieved short-term results in public security, it raises serious concerns about its long-term implications and its potential export to other Latin American nations due to its success.

¹⁹ In February, the government began holding detainees in a new mega prison, known as the "Center of Confinement of Terrorism," with a capacity of 40,000. Over 12,000 detainees were held there as of August. At least 189 detainees have died in prison during the state of emergency, human rights groups reported in October. Attorney General Rodolfo Delgado said in June that all investigations into such deaths had been closed. (HRW Salvador chapter ,2024)

²⁰ A decision by the International Court of Justice highlighted Israel's growing diplomatic isolation an order to stop the Rafah offensive was the latest action against Israel, all of which create "a tremendous sense of pressure," a former consul general said. "We want to give a clear message that the warfare that the State of Israel is now carrying out in Gaza is unacceptable, and undermines the democratic foundation on which all universities must build," (The New York Times May 24, 2024 Top U.N. Court Decision Adds to Israel's Growing Isolation)

Conclusions

Taking into account the previous analysis, it is possible to conclude that, despite the similar contexts of Colombia and El Salvador, and the similar inputs in terms of challenges, the outcomes were significantly different due to the geographical and political contexts. However, the decisive difference lies in the influence derived from the presidential system, which can orient policies in different directions.

While Nayib Bukele is a very popular and democratically elected president who has accomplished several important reforms in El Salvador, his legacy is increasingly seen as pushing the country's democracy in the wrong direction, toward more autocracy and less democracy. Despite his achievements, some of Bukele's decisions have raised serious concerns about his commitment to democratic principles and human rights.

The Constitution of El Salvador lacks effective instruments for the protection and promotion of human rights, as political actors can easily amend it. This indicates a lack of respect for the rule of law and creates a cascade effect that undermines implementing these norms in legal codes, leaving the population vulnerable. As a result, fundamental rights are not adequately protected and legal protections can be quickly altered or disregarded based on the shifting interests of those in power. This instability fosters an environment in which human rights violations can occur with impunity, undermining public confidence in the legal and political systems. As a result, marginalized and vulnerable communities suffer the most, as the lack of consistent legal protections exposes them to various forms of exploitation, discrimination, and abuse.

Bukele has prioritized the fight against violence in El Salvador, often at the expense of restricting and suppressing basic human rights. His administration has implemented an aggressive "Mano Dura" policy aimed at reducing gang violence, which has included mass arrests and severe measures against suspected gang members. These policies, while popular domestically for their immediate impact on reducing crime, have drawn criticism for their potential to erode civil liberties and judicial independence. Additionally, Bukele's approach has resonated throughout the region, with many neighboring countries expressing interest in following his path due to the immediate results in violence and criminality reduction. This has positioned El Salvador as one of the safest countries in Latin America in a short period.

Furthermore, Bukele has engaged in confrontations with international organizations and NGOs that criticize his methods. His government's actions have included expelling representatives of human rights organizations and dismissing judges who opposed his policies. These moves have sparked fears of an increasingly autocratic governance style, where dissent is not tolerated, and checks on executive power are weakened.

while Nayib Bukele's administration has made strides in addressing crime and implementing reforms, his approach has also led to significant concerns about the future of democracy in El Salvador. The balance between maintaining public security and upholding democratic norms and human rights remains a contentious and critical issue. In El Salvador, the strong presidentialism under Bukele led to the implementation of "Mano Dura" policies, which have been criticized for human rights violations and unsustainability. These policies reflect the

president's significant control over the legislative process and the ability to enforce stringent measures swiftly even if this means massive violations of human rights.

President Nayib Bukele is also showing increasingly authoritarian tendencies, using troops to intimidate Congress and packing the Supreme Court to overturn presidential term limits, all while maintaining high approval ratings. He has controversially declared himself "the coolest dictator in the world.". Bukele's administration has been marked by a significant consolidation of power, including the removal of judges and the attorney general who opposed his policies, effectively undermining the independence of the judiciary by applying a modern version of "Mano Dura" with neo-populist tendencies in order to reach his objective of eradicating Maras from El Salvador.

Contrary to this, in Colombia, the approach to similar challenges has been shaped by different geographical and economic factors, as well as a more balanced distribution of power within its government system. The extensive Colombian terrain makes effective control of certain areas difficult, especially those controlled by armed groups. This, combined with lax control policies, led Colombia into the 1990s, a decade when guerrillas had effective control over large parts of the territory, functioning as a parallel state.

While Colombia has also struggled with gang violence and security issues, its responses have been more varied and influenced by a wider array of political actors and changing their policies as was seen from ex-President Uribe to nowadays current President Gustavo Petro, showing how the legal and constitutional framework including a more active judiciary and civil society.

The active role of the Constitutional Court in Colombia has been decisive in maintaining a balanced government and preventing the emergence of an authoritarian regime. The Court has consistently acted as a check on the abuse of power by any branch of government, thereby ensuring adherence to the rule of law and protecting democratic principles.

One of the key functions of the Constitutional Court has been to review the constitutionality of legislation and executive actions. By doing so, the Court has struck down laws and decrees that it deems to violate constitutional rights and principles. This judicial oversight has been crucial in limiting the potential for executive overreach and maintaining a system of checks and balances.

In addition, the Court has played a key role in upholding human rights in Colombia. It has issued landmark rulings on several issues, including the protection of the human rights of detainees in overcrowded prisons. These rulings have been instrumental in ensuring that conditions of imprisonment comply with constitutional standards and human rights obligations. The Constitutional Court in Colombia has been instrumental in maintaining democratic governance by effectively checking abuses of power and ensuring that all branches of government operate within the constitutional framework. This judicial activism has been vital in preventing the rise of authoritarianism and promoting the rule of law.

Petro argues that tackling structural problems through social programs is essential for combating violent crime. However, addressing social issues alone is insufficient, as these reforms have not been effective in solving the problem. In Colombia, the President has opposed the construction of additional prisons, a stance that seems misguided given the country's severely overcrowded prison population, as noted by the Constitutional Court. The existing

prison infrastructure is inadequate, resulting in inhumane conditions that exacerbate rather than mitigate criminal behavior. Overcrowding not only violates human rights but also fosters an environment in which violence and criminal networks can thrive within the prison system.

Furthermore, the government's proposed judicial reforms do little to address the pervasive issue of impunity. High rates of impunity undermine the rule of law and public confidence in the justice system. Without significant improvements in the investigation and prosecution of crimes, perpetrators of violence will remain free, perpetuating the cycle of violence and insecurity.

Both Colombia and El Salvador have some of the highest impunity rates in the world, with fewer than six out of every 100 arrests leading to convictions in 2019. However, under the current state of exception in El Salvador, nearly all those arrested are imprisoned, a strategy that could potentially maintain low homicide rates if made permanent. This situation can be understood as an abnormal exception, reminiscent of Colombia before the creation of the 1991 constitution when presidents governed by decree. This historical parallel highlights the dangers of prolonged states of emergency and the potential erosion of democratic norms.

This text cannot conclude which approach is better to address the violence and conflict in these Latin American countries, highlighting the complexity of the issue and the difficulty of addressing these issues. It suggests that certain conditions, such as the massive violation of the human rights of prisoners and lax policies, can exacerbate the conflict. Such conditions not only perpetuate violence but also hinder the establishment of long-term peace and stability.

This analysis provides insights into what ultimately went wrong and underscores the need for robust human rights protections and strong policies to prevent the prolongation of conflict and the suffering of vulnerable populations. To address these issues effectively, it is essential to strike a balance between the enforcement of the rule of law and the protection of human rights and to ensure that the measures taken do not further harm affected communities and promote a change of mindset.

In this text, I have focused on the critical aspect of human rights guarantees in the context of criminal justice and the treatment of prisoners. While constitutional provisions and laws are essential, true guarantees go beyond legal statements to their effective implementation. This should be the focus of these instruments

Throughout this analysis, I explored the intentions behind the constitutional rights, highlighting the core values and principles the framers aimed to uphold. I also examined how these rights were codified and their practical implications within the criminal justice system and detainee treatment.

The core of my discussion lies in the effective exercise of human rights guarantees. The true measure of a legal system's commitment to human rights is not just in its legal texts but in its actions and outcomes. Ensuring that these rights are respected, protected, and fulfilled in practice is the ultimate goal.

Reflecting on the current state of human rights guarantees, it is clear that challenges remain. Bridging the gap between legal principles and real-world impact requires continuous efforts to strengthen implementation mechanisms, address systemic issues, and promote accountability.

In essence, the effective enjoyment of human rights guarantees is an ongoing process. It requires an unwavering commitment to translating constitutional ideals into tangible realities for all individuals, especially those within the criminal justice system. This is the central message and critical conclusion of my work.

Bibliography

- Almeida, M. de L. P. de, Mitterer, I. T., & Minuscoli, M. F. (2016). *A EDUCAÇÃO PROFISSIONALIZANTE NO BRASIL E EM SANTA CATARINA: HISTÓRICO E UMA BREVE ANÁLISE DO IFC/IBIRAMA*.
- Ariza, L. J., & Iturralde, M. (2018). *Transformations of the crime control field in Colombia. The Palgrave handbook of criminology and the global south*, 687-708.
- Briceño-León, R., & Zubillaga, V. (2002). *Violence and globalization in Latin America. Current Sociology*, 50(1), 19-37.
- Antón-Mellón, J. A., Álvarez, G. y Rothstein, P. A. "Populismo punitivo en España (1995-2015): presión mediática y reformas legislativas". *Revista Española de Ciencia Política*, 43, 13-36, 2017.
- Bayer, A. K. (2013). *Peace processes in Colombia: International third-party interventions. Journal of Peace, Conflict & Development*, 20, 61-80.
- Beale, S. S. (2006). *The news media's influence on criminal justice policy: How market-driven news promotes punitiveness. Wm. & Mary L. Rev.*, 48, 397.
- Bielefeldt, H. (2000). "Western" versus "Islamic" human rights conceptions? A critique of cultural essentialism in the discussion on human rights. *Political theory*, 28(1), 90
- Bennister, 't Hart, and Worthy, *Understanding Political Leadership*
- Breda, T. (2023). *Why El Salvador's Anti-Crime Measures Cannot (and Should Not) Be Exported. IAI Commentaries*, 23.
- Boletín de Seguridad II [PDF document]. Retrieved from https://colaboracion.dnp.gov.co/CDT/Prensa/Publicaciones/Boletin_de_Seguridad_II.pdf
- Cabezas, L. P. (2017). *Gobiernos de Álvaro Uribe y Juan Manuel Santos, tratamiento del conflicto armado en Colombia. Ciencia y poder aéreo*, 12(1), 126-135.
- CASE OF HIRST v. THE UNITED KINGDOM
<https://hudoc.echr.coe.int/#%22itemid%22:%22001-70442%22>
- Cardenas, C. E. (2002). *The new era of violence in Colombia: A theoretical explanation of the rise of violence in the late twentieth century and the role of Colombian capitalism. American University*.
- Capone, F. (2018). *An overview of the DDR process established in the aftermath of the revised peace agreement between the Colombian government and the FARC: finally on the right track? Global Jurist*, 18(1), 2017.
- Castillejos-Aragón, M. (2024). *The Struggle for Judicial Independence: The Supreme Court as a Constitutional Beacon in El Salvador. In Judicial Independence: Cornerstone of Democracy (pp. 315-331). Brill Nijhoff*.
- Cavatorta, F. (Ed.). (2012). *Civil society activism under authoritarian rule. New York*

- Christine Murray and Alan Smith, "Inside El Salvador's Mega-Prison: The Jail Giving Inmates Less Space Than Livestock", in *Financial Times*, 7 March 2023 <https://www.ft.com/content/d05a1b0a-f444-4337-99d2-84d9f0b59f95>
- Centro, E., Main, E. C., Links, E. C., Fellows, E. C., Work, P. Y., Books, S. W. J., & Stuff, O. *Perspective: The Salvadoran Government's Negotiations with Gangs: A Critical Assessment*. Cristosal. (2022). *Violaciones a los derechos humanos durante el régimen de excepción en El Salvador*. Obtenido de Enfoca: <https://enfoca.org/web/wp-67content/uploads/2022/05/Informe-situacional-30-di%CC%81as-del-estado-de-excepcio%CC%81n.pdf>
- Cruz, J. M., & Durán-Martínez, A. (2016). *Hiding violence to deal with the state: Criminal pacts in El Salvador and Medellin*. *Journal of Peace Research*, 197-210.
- Cuéllar, J. E. (2022). *El Salvador's two pandemics: Maximum insecurity*. (Cambridge).
- De Barreto, I. (septiembre de 2013). *TEORÍA DE LA PENA*. UNIVERSIDAD DE SALAMANCA. XXXIII CURSOS DE ESPECIALIZACIÓN EN DERECHO. <https://www.pj.gov.py/ebook/monografias/nacional/penal/InocenciaAlfonsoTeor%C3%ADa-de-la-pena.pdf>
- Cruz, J. M. (2009, May). *Global gangs in El Salvador: Maras and the politics of violence*. In *Ponencia presentada en el Global Gangs Workshop, Centre on Conflict*,
- Darke, S., & Karam, M. L. (2016). *Latin American prisons*. In *Handbook on prisons* (pp. 460-474). Routledge.
- Delaney, P. (2008). *Legislating for equality in Colombia: constitutional jurisprudence, Tutelas, and social reform*. *The Equal Rights Review*, 1, 50-59.
- Development, and Peacebuilding*, Génova, mayo (pp. 14-15).
- Dugas, J. C. (2003). *The emergence of Neopopulism in Colombia? The case of Alvaro Uribe*. *Third World Quarterly*, 24(6), 1117-1136.
- Ferrari, E., & Prías Trujillo, Á. M. (2022). *(Post-Accord Violence: A Comparative Analysis between El Salvador and Colombia)*.
- Freedom House. (2024). *Freedom in the World 2024: Research methodology*. Retrieved from https://freedomhouse.org/sites/default/files/2024-02/FIW_2024%20MethodologyPDF.pdf
- Forst, R. (1999). *The basic right to justification: toward a constructivist conception of human rights*. *Constellations*, 6(1), 35-60.
- Fox, D. T., Gallón-Giraldo, G., & Stetson, A. *Lessons of the Colombian Constitutional Reform of 1991. Framing the State in Times of Transition*.
- Gamboa, L. (2023). *How Oppositions Fight Back*. *Journal of Democracy*, 90-104.
- Gantiva, D. A., Palacios, M. A., & NAVAL POSTGRADUATE SCHOOL MONTEREY CA. (1997). *The peace processes of Colombia and El Salvador: a comparative study* (Master's thesis, Naval Postgraduate School).
- Georgetown Security Studies Review*. (2023, April 17). *Security at the Expense of Human Rights: The Case of El Salvador's Megacarcel*. *Georgetown Security Studies Review*. <https://georgetownsecuritystudiesreview.org/2023/04/17/security-at-the-expense-of-human-rights-the-case-of-el-salvadors-megacarcel/>
- De Dardel, J., & Söderström, O. pg 45, 2018 Sweig, J. E. (2002). *What kind of war for Colombia?* *Foreign Aff.*, 81, 122.
- Head, B. W. (2023). *Wicked problems in public policy*. In *Encyclopedia of Public Policy* (pp. 1-8). Cham: Springer International Publishing.
- Herbolzheimer, K. 2016. "Overcoming security challenges in peace processes: Colombia and the Philippines." London: RUSI. https://rc-services-assets.s3.eu-west-1.amazonaws.com/s3fs-public/NOREF_CR_Report_Colombia%20Innovations_final.pdf

- Hellin, J., Kanampiu, F., Erenstein, O., Thorpe, W., Singh, J., Varma, A., & King, A. (2008). *Metal silos bring food security to El Salvador*. *Appropriate Tech*, 35, 69-70.
- Hewitt-Taylor, J. (2001). *Use of constant comparative analysis in qualitative research*.
- Maihold, G. (2022). *Colombia's path to "total peace": President Gustavo Petro cannot fall back on the FARC blueprint*.
- Negretto, G. L. (2014). *Authoritarian constitution making. Constitutions in authoritarian regimes*, 83-110. *Nursing Standard (through 2013)*, 15(42), 39.
- Haddad, J. (2017). *Derecho Penitenciario*. Ciudad Argentina.
- Holland, A. C. (2013). *Right on crime? Conservative party politics and mano dura policies in El Salvador*. *Latin American Research Review*, Long, T., Bitar, S., & Jiménez-Peña, G. (2020). *Domestic contestation and presidential prerogative in Colombian foreign policy*. *Bulletin of Latin American Research*, 466-482.
- ICTJ, 2008, «What is Transitional Justice », International Center for Transitional Justice, <http://www.ictj.org/en/tj>
- LaFree, G., Morris, N. A., & Dugan, L. (2010). *Cross-national patterns of terrorism: Comparing trajectories for total, attributed and fatal attacks, 1970–2006*. *The British Journal of Criminology*, 50(4), 622-649.
- Levitt, S., & Rubio, M. (2005). *Understanding crime in Colombia and what can be done about it. Institutional Reforms: The Case of Colombia*, 131.
- Mero, G., Silva Correa, M. B., & Marianela, M. (2023). *Estudio comparado a las normas del sistema penitenciario como instrumento de rehabilitación y reinserción social: Ecuador, El Salvador y México*.
- Moncada, E. (2020). *Cities, Criminal Governance and Subnational Research in Comparative Politics. The Organized Section in Comparative Politics of the American Political Association*, 30(1), 50-6.
- Musalo, K. (2021). *El Salvador: Root Causes and Just Asylum Policy Responses*. *Hastings Race & Poverty LJ*, 18, 178.
- Nilsson, M. (2022). *Nayib Bukele: populism and autocratization, or a very popular democratically elected president?* *Journal of Geography, Politics and Society*, 12(2), 16-26.
- Pickvance, C. G. (2001). *Four varieties of comparative analysis. Journal of housing and the built environment*, 16, 7-28.
- Prado, M. M., Trebilcock, M., & Hartford, P. (2012). *Police reform in violent democracies in Latin America*. *Hague Journal on the Rule of Law*.
- Repucci, S., & Slipowitz, A. (2021). *Democracy under siege. Freedom Hous*.
- Ponce, A. (2023, May 8). *On security, Bukele and Petro have a problem in common. Americas Quarterly*. <https://www.americasquarterly.org/article/on-security-bukele-and-petro-have-a-problem-in-common/>
- Rettberg, A. (2007). *The private sector and peace in El Salvador, Guatemala, and Colombia*. *Journal of Latin American Studies*, 39(3), 463-494.
- Rosen, J. D., Cutrona, S., & Lindquist, K. (2023). *Gangs, violence, and fear: punitive Darwinism in El Salvador*. *Crime, law, and social change*, 79(2), 175-194.
- Roberts, J. V., Stalans, L. J., Indermaur, D., & Hough, M. (2002). *Penal populism and public opinion: Lessons from five countries*. Oxford University Press.
- Rodgers, D. (2009). *Slum wars of the 21st century: Gangs, Mano Dura, and the new urban geography of conflict in Central America*. *Development and Change*, 949–976.
- Rosen, J. D., & Cutrona, S. (2020). *Understanding support for Mano Dura strategies: Lessons from Brazil and Colombia*. *Trends in Organized Crime*, 24, 1–19.

- Rosen, J. D., & Cruz, J. M. (2018). *Overcoming stigma and discrimination: Challenges for reinsertion of gang members in developing countries*. *International Journal of Offender Therapy and Comparative Criminology*, 62(15), 4758–4775.
- Rosen, J. D., Cutrona, S., & Lindquist, K. (2023). *Gangs, violence, and fear: punitive Darwinism in El Salvador*. *Crime, law, and social change*, 79(2), 175-194.
- Roumie, N. *The Great Lakes Journal of Undergraduate History*.
- Sofía Martínez et al., “Life Under Gang Rule in El Salvador”, in *International Crisis Group Commentaries*, 26 November 2018, [https:// www.crisisgroup.org/node/7834](https://www.crisisgroup.org/node/7834)
- Saab, B. Y., & Taylor, A. W. (2009). *Criminality and armed groups: A comparative study of FARC and paramilitary groups in Colombia*. *Studies in Conflict & Terrorism*, 32(6), 455-475.
- Srinivas, N. (2010). *The phenomenon of NGOs: a lateral reading from Latin America*. *Critical perspectives on international business*, 6(2/3), 116-127.
- The MS-13 Threat: A National Assessment*, FED. BUREAU OF INVESTIGATION (Jan. 14, 2008), http://www.fbi.gov/page2/jan08/msl3_O11408.html
- Tyler, D. C., & McNeil, B. (2003). *Librarians and link rot: a comparative analysis with some methodological considerations*. *portal: Libraries and the Academy*, 615-632.
- Wade, C. J. (2022). *El Salvador: ¿Democracy in Peligro? In Latin American Politics and Development* (pp. 418-435). Routledge.
- Velásquez, A. V. (2006). *El gobierno de Álvaro Uribe: proyecto y resultados*.
- Wolf, S. (2011). *Mano Dura: Gang Suppression in El Salvador*. *Mano Dura: Represión de las pandillas en El Salvador*. <http://sustainablesecurity.org/article/mano-dura-gang-suppression-el-salvador>
- Wolf, S. (2012a). *El Salvador’s Pandilleros Calmados: The challenges of contesting Mano Dura through peer rehabilitation and empowerment*. *Bulletin of Latin American Research*, 31(2), 190–205. [https:// doi. org/ 10. 1111/j. 1470- 9856. 2011. 00609.x](https://doi.org/10.1111/j.1470-9856.2011.00609.x)
- Wolf, S. (2012b). *Mara Salvatrucha: The most dangerous street gang in the Americas? Latin American Politics and Society*, 54(1), 65–99.
- Wolf, S. (2017). *Mano Dura: The politics of gang control in El Salvador*.
- Wood, E. J. (2003). *Insurgent collective action and Civil War in El Salvador*.
- Zarama, F. (2016). *Caguan's and Havana's Peace Talks: Strategic Retreat or Stalemate Driven? In Handbook of Research on Transitional Justice and Peace Building in Turbulent Regions* (pp. 471-508). IGI Global.
- https://www.constituteproject.org/constitution/Colombia_2015