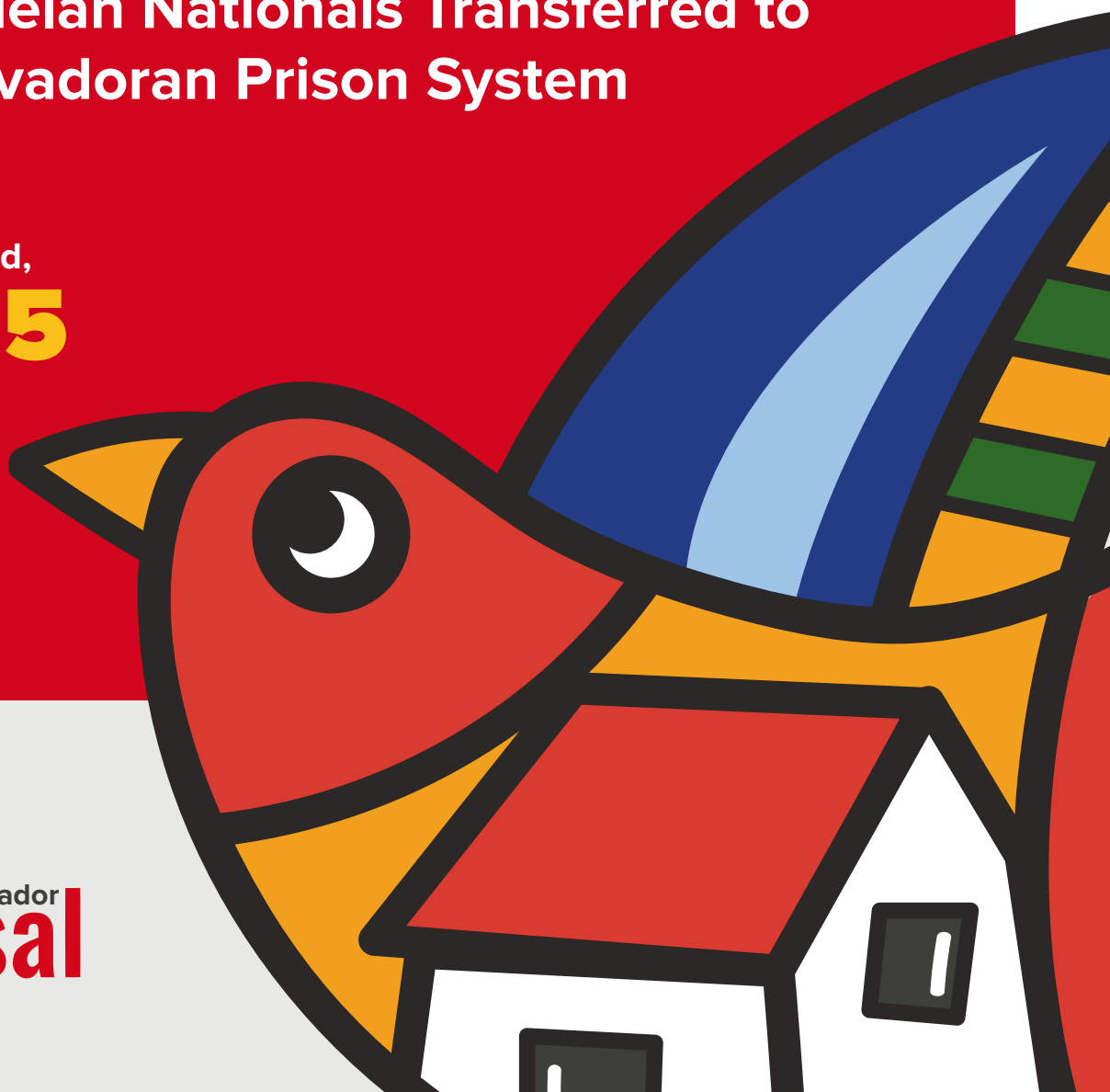


Analysis

of State Responsibility Regarding
Venezuelan Nationals Transferred to
the Salvadoran Prison System

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Following the release of Venezuelan nationals who were unjustly detained in the Salvadoran prison system and subsequently returned to their country of origin, several legal questions have arisen concerning the responsibilities derived from this case. In this context, it is essential to reflect on the legal implications of the unlawful detention of individuals under the custody of state authorities, as well as the human rights violations involved in such situations.

Recently, the Salvadoran State's response to the investigations by the Working Group on Enforced or Involuntary Disappearances, under the Office of the United Nations High Commissioner for Human Rights (hereinafter referred to as the Working Group), was made public. This response relates to the situation of over 250 Venezuelan nationals who were illegally deported from the United States and transferred to the Salvadoran prison system.¹

This response, which has not been officially released by the competent authorities and has only become publicly known through the victims' families,² attempts to evade El Salvador's international responsibility by assigning it entirely to U.S. jurisdiction.³

Given these circumstances, it is crucial to ask whether international human rights law allows States to shirk their obligations toward individuals who are materially under their custody, and whether it is legitimate to keep secret an agreement between the United States and El Salvador—particularly when that agreement has led to the arbitrary detention of hundreds of individuals, stripped them of legal protection, and subjected them to complete isolation with no means of legal defense.

The Salvadoran Government's Defense and the U.S. Position

According to various media reports, in response to inquiries from the Working Group, El Salvador has attempted to disclaim responsibility for the detainees, arguing that it

neither carried out the arrests nor the transfers of these individuals to its prison system. It further claimed that its involvement was limited to implementing a bilateral cooperation mechanism with another State—implicitly the United States—under which Salvadoran prison infrastructure was used to hold individuals detained under the legal authority and jurisdiction of that other State.⁴

The Salvadoran government therefore maintains that legal responsibility and applicable jurisdiction over these individuals lie exclusively with the other State, based on principles of sovereignty and bilateral penal cooperation. It argues that it can only be held accountable for matters falling under its jurisdiction and sovereignty, attempting to exclude itself from the obligations arising from the principle of non-refoulement.

Meanwhile, the U.S. government has stated that after deporting the Venezuelan nationals and transferring them to El Salvador, the U.S. no longer holds jurisdiction over them. It has used this argument specifically to avoid complying with habeas corpus obligations, refusing to provide information to either plaintiffs or the courts.⁵

This situation poses serious risks to the rights of individuals illegally deported to El Salvador, who are effectively placed in a legal limbo where neither of the two involved countries assumes responsibility or guarantees their rights.

In light of this situation, it is necessary to assess certain aspects of the agreement and the positions taken by the States involved, which—when examined under the international human rights system—call into question the validity of both States' stances. Accordingly, this analysis will address the following elements: i) Whether it is possible to evade international human rights responsibilities through bilateral agreements between States; ii) What the responsibilities of States are toward individuals under their custody; and iii) Whether it is legitimate to keep an agreement between States secret when it so profoundly affects the rights of hundreds of people.

Assessment of the States' Responsibilities under International Human Rights Law

The Salvadoran State has cited national sovereignty and a secret agreement signed with the United States to justify its position on the deported individuals placed in its prison system. Before assessing each State's responsibility, it is necessary to consider the victims' perspective.

International human rights standards clearly state that no person should be left in a state of complete legal defenselessness. States are obligated to protect the rights of all persons regardless of their migratory status. This includes the protection of life, personal integrity, and the prohibition of arbitrary detention.⁶

Modern understandings of the concepts of State and sovereignty require compatibility with the international human rights system.⁷ Human rights are rooted in transcendent values beyond the legal norms that regulate them; that is, beyond their legal recognition, their foundation lies in the "moral consciousness of humanity regarding their value and the inherent aberration of any act that denies them."⁸

Accordingly, national sovereignty must be interpreted through the lens of these higher moral values. Protecting human dignity must take precedence over institutional obstacles. The international human rights system exists as a limitation on State sovereignty, created specifically to ensure the protection of individual rights.⁹

This international protection system does not eliminate State sovereignty—it gives it new meaning. Therefore, sovereignty cannot be used as an excuse to evade international obligations related to the protection of human dignity.¹⁰

Human rights obligations derive from legal instruments and conduct principles that States have voluntarily negotiated and ratified, in full respect of their sovereignty, and must be fulfilled in good faith. Thus, it is contradictory to invoke sovereignty to justify failing to meet obligations that arise from sovereignty itself.¹¹

In this sense, El Salvador's position lacks legal foundation: neither sovereignty nor bilateral agreements exempt it from fulfilling international obligations under the human rights system.

State Responsibilities Regarding Persons in Custody

The case of the Venezuelan nationals who were unlawfully detained for months in the Salvadoran prison system is especially grave. First, they were placed in prison stripped of legal protections, held incommunicado, and denied due process and judicial oversight.¹² Second, the prison system where they were confined is notorious for grave human rights abuses, including torture, cruel treatment, due process violations, and even the deaths of hundreds of people in State custody.¹³

If the positions of both involved States are accepted, these individuals are left in absolute legal limbo: the United States, having carried out the deportations, claims no responsibility since the individuals are no longer on U.S. soil; while El Salvador, having received and detained them, denies any duty to provide redress because it did not carry out the deportations.¹⁴ Therefore, no person can be stripped of their essential rights simply because they are in one country and not another.

Furthermore, State obligations toward individuals in their custody do not arise from the States' recognition of jurisdiction but from the *factual situation* of control. The Inter-American Court of Human Rights (IACtHR) has affirmed that factual situations of vulnerability obligate States to adopt positive measures—affirmative obligations—to address and reverse vulnerability and defenselessness, even against the actions of third parties.¹⁵

The IACtHR has also held that “States are obliged not only to respect the rights and freedoms [...] but also to ensure their full and free exercise to every person [...] regardless of who is responsible for the violation.”¹⁶ This doctrine of due diligence requires States to act proactively, imposing affirmative obligations when human rights are violated or at risk of being violated.

Additionally, States are under a duty of guarantee, which means it is not enough to refrain from violating rights; they must prevent violations from occurring.¹⁷ This notion of the State as guarantor creates structural challenges, requiring it to be organized legally and administratively for the protection of rights.¹⁸ As a result, the State cannot remain neutral in the face of rights violations—it must create conditions for the enjoyment of liberties and the preservation of human dignity.¹⁹

Accordingly, Salvadoran State, even if it denies formal jurisdiction over the victims in its prison system, has positive obligations toward them derived from having received them in material terms. Moreover, its rejection of formal jurisdiction—i.e., judicial oversight—does not absolve responsibility; rather, it aggravates it.

The International Convention for the Protection of All Persons from Enforced Disappearance states that the mere presence of a person presumed to be forcibly disappeared on the territory of a State creates direct obligations for that State.²⁰ These include ensuring liberty and integrity, and adopting preventive and corrective measures against enforced disappearance.

Thus, contrary to El Salvador's claims, it is irrelevant whether it directly participated in the deportation, expulsion, or transfer of the victims. Its obligations arise from the fact that these individuals are materially under Salvadoran government custody and subjected to conditions imposed by its institutions.

Since the beginning of the transfers from the U.S. to the Salvadoran prison system in March 2025, these individuals have been held incommunicado. Neither country has released an official list of detainees. There is no evidence they received medical or legal assistance or that they have been formally accused of any crimes or placed under any jurisdiction.

Cristosal requested from the General Directorate of Prisons (DGCP) the names and legal status of all Venezuelan nationals received from the U.S. and imprisoned in El Salvador. The response was that such data—including names—is classified. Meanwhile, the Presidential Office claimed it was not competent to provide the information.²¹

This situation is particularly serious when analyzed through the lens of international human rights standards on enforced disappearance.

The Convention on Enforced Disappearance prohibits secret detentions and mandates official registries for persons deprived of liberty (Art. 17.1, 17.3). El Salvador has kept secret the detention of more than 250 Venezuelan nationals for four months—no official

list or charges have been disclosed, and families have not been informed, violating rights under Article 18 of the Convention.

The Convention also establishes the right of detainees to communicate with lawyers, family, and trusted individuals (Art. 17.2.d). The Venezuelans held in CECOT have been kept incommunicado, and family and legal visits have been systematically blocked.

As a result, these individuals' human rights violations are the direct responsibility of El Salvador, which controls the facilities and exercises material custody over them.

On the other hand, it is important to recognize that the violation of these individuals' rights originated in events that took place in the United States, where they were apprehended by state agents and illegally deported without the guarantees of due process. These practices also constitute serious human rights violations, for which responsibilities must be determined, accountability demanded from the authorities involved, and mechanisms for reparation guaranteed for the victims.

In any case, transferring individuals outside national territory does not absolve responsibility for their treatment—it worsens the situation. Especially when considering that such actions have been used as propaganda to deter potential migrants from entering the United States irregularly, adding an element of stigmatization and instrumentalization of the victims.

In conclusion, both the position of El Salvador and that of the United States are erroneous and deliberately manipulative, as both have sought to evade their responsibilities, leaving hundreds of people in complete legal limbo. Each State has attempted to disassociate itself exclusively from jurisdiction over the events, when in fact the actions were committed by both, and both share direct responsibility for what happened.

Reflections on the Secrecy of the Agreement Between the U.S. and El Salvador

Both the U.S. and Salvadoran governments have acknowledged on various occasions that a cooperation agreement exists between them under which deported individuals were transferred from the United States to the Salvadoran prison system. However, neither State has made this agreement public.

Although the content of the agreement has not been officially disclosed, it is evident that, as a direct result of it, more than 250 people were subjected to serious human rights violations, stigmatization, and instrumentalization. This situation also affected their families, who for months attempted to contact them and verify their physical and legal status. It is worth reflecting on whether an agreement signed between two States can remain secret when it has had such devastating consequences for so many lives.

In this regard, it is important to note that the right to access public information is a human right, recognized both in Article 13 of the American Convention on Human Rights and Article 19 of the Universal Declaration of Human Rights. As established by the Inter-American Court of Human Rights (IACtHR), this right is a manifestation of freedom of expression and entails both the ability to request information held by the State and the corresponding obligation of the State to provide it. 22

Likewise, the IACtHR has held that restrictions on the right of access to information must be understood as exceptional and limited, in accordance with the principles of legality, legitimate purpose, and proportionality—as interpreted within the needs of a democratic society.²³

In this context, the principle of maximum disclosure, which is central to the right of access to public information, obligates States to interpret exceptions narrowly and in alignment with democratic values that inform international human rights law. Thus, the right to access information cannot be restricted to facilitate or conceal serious human rights violations, as such situations involve a public interest that outweighs State interests. The IACtHR has stated:

“Public authorities cannot hide behind the protective veil of State secrecy to avoid or hinder the investigation of illegal acts committed by members of their own institutions. [...] The decision to classify information as secret and deny its release can never depend solely on a State body whose members are accused of the unlawful act.”

In the same vein, El Salvador’s Access to Information Law states, in the final section of Article 19, that it is prohibited to classify as reserved any information related to investigations of serious human rights violations.

In conclusion, the serious consequences resulting from the agreements and understandings between the governments of El Salvador and the United States render unsustainable any arguments invoking security or State secrecy to continue maliciously concealing an instrument that has enabled human rights violations. This highlights the legitimacy of the public's interest in knowing the contents of the agreement.

Conclusiones

Although the individuals were eventually returned to Venezuela, the situation of those who were illegally deported from the United States and unjustly held in the Salvadoran prison system presents a very specific case with serious consequences for hundreds of families.

In this case, we see two States acting in coordination to commit grave human rights violations, showing disregard for human dignity. This situation demands that international human rights bodies clearly define the scope of each State's responsibility and establish effective accountability mechanisms to address such practices.

Both El Salvador and the United States are responsible for what happened to the victims, and both must assume their responsibilities accordingly. Under no circumstances can either State evade its obligations by leaving the victims in total legal defenselessness.

El Salvador must take responsibility for the material control it exercised over the victims and ensure reparations for the harm caused, as well as take measures to prevent future instances of enforced disappearance, in line with international standards.

Moreover, the public interest must prevail regarding the agreement signed between the United States and El Salvador, which facilitated the transfer of illegally deported individuals into a prison system stripped of legal protections and judicial oversight.

Finally, the way the deportation agreement and the subsequent release of the individuals were carried out raises many questions about the victims' rights. The mechanism used for their return—and their exchange for prisoners from the Venezuelan system—more closely resembles a hostage swap carried out entirely outside the framework of international humanitarian law. This implies that the States involved have effectively acknowledged holding prisoners illegitimately, in violation of international human rights norms.

In a democratic system, criminal proceedings are conducted by independent courts that determine a person's liberty based on proven facts. In this case, we are witnessing two political powers deciding with impunity over the lives of hundreds of people, without regard for democratic or legal standards—using detainees as bargaining chips in a political game.

A clear sign of a democratic system's collapse is the total submission of its judiciary to political power. In this case, we are witnessing presidents ordering the detention and release of individuals outside democratic oversight. In a rule-of-law system, it is institutions and laws that determine guilt and impose penalties; in an authoritarian system, it is those in power who assume that role.